

ISSUES RELATING TO THE DEPORTATION OF MICHAEL O'ROURKE

HEARINGS BEFORE THE SUBCOMMITTEE ON THE CONSTITUTION OF THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

CONSIDERING THE CIRCUMSTANCES AND ISSUES RELATING TO THE
DEPORTATION OF MICHAEL O'ROURKE

JUNE 18 AND JULY 30, 1984

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ISSUES RELATING TO THE DEPORTATION OF MICHAEL O'ROURKE

MONDAY, JUNE 18, 1984

U.S. SENATE,
SUBCOMMITTEE ON THE CONSTITUTION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, in room SD-226, Dirksen Building, commencing at 9:40 a.m., Hon. Orrin G. Hatch (chairman of the subcommittee) presiding.

Present: Senators Specter, Thurmond, and Simpson.

Staff present: Stephen J. Markman, chief counsel and staff director; Randall R. Rader, general counsel; Carol Epps, chief clerk; and Leslie Leap, clerk.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH, CHAIRMAN, SUBCOMMITTEE ON THE CONSTITUTION

Senator HATCH. Ladies and gentlemen, this morning's hearing focuses on the pending deportation order of Michael O'Rourke, a citizen of the Republic of Ireland.

Allegations have been made of significant improprieties by the Government in securing this order. And Senator Specter has asked me as chairman of the Constitution Subcommittee to hold this hearing so that he could look into this to find out just what are the true facts with regard to this matter. As a courtesy to Senator Specter, I am certainly willing to do this.

To place this issue however in a bit of historical perspective, let me summarize the case against Mr. O'Rourke who has been in the custody of the Immigration and Naturalization Service for approximately 4 years pending a variety of appeals concerning his deportation. It is my understanding that this represents the longest incarceration in the history of the Service. In 1975, Mr. O'Rourke was convicted in the Republic of Ireland—I emphasize that this was not Northern Ireland, but the Republic of Ireland—for the illegal possession of firearms and explosives. The Irish court concluded that Mr. O'Rourke was in the "possession of explosive substances under suspicious circumstances for purposes of endangering life." This conviction related to Mr. O'Rourke's supervision of a bombmaking facility which he ran under the cover name of Aqua Engineering.

In addition, Mr. O'Rourke was convicted for the illegal possession of firearms and explosives at his father's residence which was de-

scribed by the court as a treasure trove of materials for assembling bombs.

In 1976, Mr. O'Rourke escaped from prison by blowing up a prison door with concealed explosives. At this point he resumed his former activities as part of an Irish Republican Army "active service unit" considered by most Irish authorities to be that arm of the IRA in charge of bombing and terrorist operations.

In 1978, Mr. O'Rourke entered this country under the assumed name of Patrick Manion, apparently for purposes relating to his involvement with the IRA active service units.

In 1979, he was arrested in the United States for entering this country by fraud and given the option of leaving the country on a voluntary basis. Rather than do so, Mr. O'Rourke initiated legal action to prevent his deportation to Ireland.

At his deportation hearing in 1981, Mr. O'Rourke admitted that he was a member of the Provisional Irish Republican Army and had indeed been actively involved in manufacturing bombs, mortars, and rockets in Southern Ireland.

After an extended series of legal proceedings pursued by Mr. O'Rourke and the Immigration and Naturalization Service, the U.S. Circuit Court of Appeals for the Second Circuit denied Mr. O'Rourke any adjustment of status, denied his request for asylum as a political refugee and denied his request for withholding deportation to the Republic of Ireland.

In summary, Mr. O'Rourke has been convicted on two occasions by Ireland as a terrorist actively engaged in the production of bombs and other explosive devices. He is an escapee from an Irish prison, having exploded his way out of an Irish prison. He is a violator of U.S. immigration laws, having entered this country under a false name and under false pretenses.

It is alleged that he has repeatedly perjured himself before Federal authorities. In sworn testimony in this country he has boasted of his prowess in fabricating weapons for the purpose of killing British soldiers and Irish policemen in Northern Ireland.

He has been a member of Marxist organizations in Ireland committed to the violent overthrow of Ulster.

The continued presence of Mr. O'Rourke in the United States has been described as "prejudicial to the public interest" by no less than the President of the Irish State Mr. Garrett Fitzgerald, while both the INS, the Immigration and Naturalization Service, and the Board of Immigration Appeals have concluded that Mr. O'Rourke's presence in this country would be detrimental to relations between the United States and both Ireland and Great Britain.

However, even if all of these allegations are true, and they appear to be, Mr. O'Rourke, whose early deportation may be in the best interest of the United States, is entitled to certain elements of due process. It is alleged by some that he has been denied this as a result of an immigration judge's decision to recuse himself from hearing the O'Rourke case following an INS investigation of the judge.

Mr. O'Rourke contends that the recusing judge would have likely entered an order more favorable to Mr. O'Rourke than the present order.

Ladies and gentlemen, let me say with respect to these allegations that they have already been explored in great depth by our friend and colleague on this subcommittee, Senator Simpson, whose Subcommittee on Immigration has concluded that Mr. O'Rourke was accorded fair and equitable treatment by the U.S. Government.

Senator Simpson and his Immigration Subcommittee have concluded that Mr. O'Rourke's expeditious deportation is in the best interest of this country and of course I, and I am sure all members of the committee, personally place a great value on their expertise in this area.

I also place great value on the abilities of the Immigration and Naturalization Service and respect their conclusions as well. I have only the highest regard for the Service and its leadership.

I have chosen to conduct this hearing on the request of another highly distinguished colleague of mine who has raised honest and sincere questions about the process leading to Mr. O'Rourke's present circumstances—Senator Specter. I believe there are some questions that have been raised here that need to be answered, and I hope that all of the witnesses Senator Specter has asked to come here today will be here.

However, if these hearings confirm the conclusions of Senator Simpson and the Immigration and Naturalization Service, I think there will absolutely be no fair basis on the part of anyone to suggest that Mr. O'Rourke was not given or accorded every conceivable consideration, every conceivable element of due process, or every conceivable hearing by our country prior to his deportation. I suspect that such treatment is in accordance with the treatment we would accord to anybody under the laws of our country. It may be treatment that is considerably more than Mr. O'Rourke himself, if these allegations are true, would extend to those whose interests differ with his own.

With that, I want to personally compliment the distinguished Senator from Pennsylvania. He has told me from the start that his reason for pursuing this is not necessarily to make judgments about the guilt or innocence of Mr. O'Rourke but to see if our processes and systems are working and functioning properly and that due process is really being accorded here.

I do not know anybody in the U.S. Senate who has a greater capacity to investigate these matters than the distinguished Senator from Pennsylvania, having served as a public prosecutor for so many years, I have tremendous respect for him and for his ability to be able to get into these matters, protecting the rights of even those who many may feel are unsavory.

So I am very interested in what happens at this particular hearing. I can only stay for a short period of time, but will certainly read the transcript, paying very great attention to what Senator Specter is able to gain from this hearing.

With that, we will open this hearing with three representatives from the Service. I will turn to Senator Specter in a minute.

We are going to call on Mr. Walter Connery of the Office of Professional Responsibility; Mr. Theodore Weiss, investigator; and Mr. Gerald LaSalle, also an investigator. We appreciate you gentlemen being with us this morning.

At this point let us turn to the distinguished chairman, Senator Thurmond.

The CHAIRMAN. I do not have any statement. I am sorry, but I cannot stay for the hearing.

Senator HATCH. I understand. Thank you. We are happy to have the distinguished chairman of the full committee here.

I will turn to my good friend and colleague, Senator Specter, for his comments. Then we will turn to you three gentlemen.

**OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR
FROM THE STATE OF PENNSYLVANIA**

Senator SPECTER. Thank you very much, Mr. Chairman. I am very grateful to you, Senator Hatch, for convening these hearings in your capacity as chairman of the Subcommittee on the Constitution of the Committee on the Judiciary.

This matter was brought to my attention by Mrs. Michael O'Rourke who is a resident of the Commonwealth of Pennsylvania. My inquiry into this matter has led me to certain very substantial questions about the procedural regularity of the matters before the Immigration and Naturalization Service. As the issues are defined before this subcommittee, the question is not what Mr. Michael O'Rourke did in terms of any convictions or conduct in Ireland but solely what happened before the Immigration and Naturalization Service. It is my judgment that the U.S. Senate and the Committee on the Judiciary have a very significant oversight responsibility to see to it that the proceedings before the Immigration and Naturalization Service follow due process of law.

It is a long tradition in the United States that everyone, regardless of what charges are leveled against him, is entitled to due process of law. Most of my professional career has been in the role of a prosecuting attorney to convict the guilty, but at all times to see in the proceedings to convict the guilty or to see that justice is done, that there is procedural due process of law.

There are significant questions in this case arising out of the recusal of Administrative Law Judge Hupp, who was followed more than 100 miles from the courthouse in Philadelphia, PA, where he was on duty, to his home in Maryland; and allegedly on the basis of one anonymous letter, a circumstance which is highly irregular.

I have been involved in many, many investigations, including the investigations of judges, and I have never seen that kind of a tailing or a following based upon one anonymous letter.

Unfortunately, as this hearing is evolving today, and I have discussed this matter with Senator Hatch, there are certain key witnesses who are not present. Judge Hupp has declined to appear at this proceeding, stating to me by telephone on Thursday that he had plans to be in Ocean City, NJ, today for a vacation and also advising me of his health problems. I urged him to be present here today and he declined to do so.

I have discussed preliminarily with Senator Hatch the issue of a subpoena and as it is not the practice of this committee to issue subpoenas without very substantial cause; it was decided that we would proceed here today to see how far we could go. The matter as to the pressing for a subpoena is something which will await the outcome of these events today.

On arrival at the Senate this morning, I have since been advised that the District Director of the Immigration and Naturalization Service, Mr. Lyle Karn, will not be present today. I had been advised last week that it was the expectation of the U.S. Government to have Mr. Karn present and I do believe that Mr. Karn's testimony before this committee is indispensable to a full hearing on this matter.

Judge Hupp has said that it is his belief that Lyle Karn, the District Director, was behind the complaint which led to Judge Hupp's being followed.

Senator HATCH. Who said that, Senator?

Senator SPECTER. Judge Hupp has said that.

Judge Hupp has further said that District Director Karn was unhappy with Judge Hupp's handling of the O'Rourke matter because Judge Hupp permitted extensive cross-examination of Mr. Karn and Mr. Karn was unhappy with Judge Hupp because Judge Hupp had ruled against deportation in other cases. Judge Hupp has further said that—that Judge Hupp had been advised by some 15 or 20 of the 32 immigration judges after this incident that it was typical antics of other district directors to harass immigration judges to get them off of certain cases.

Now, these are obviously very, very serious charges and matters which in my judgment have to be explored by this committee in pursuit of our oversight responsibilities as to what is happening in the administration of justice before the Immigration and Naturalization Service, which is subject to the jurisdiction of the Committee on the Judiciary.

When I arrived at the Senate this morning, I was further advised that Mr. Michael Shahean would not be present. Mr. Shahean is in charge of the Department of Justice's Office of Professional Responsibility, which is separate from the Immigration and Naturalization Service conducting investigations. I am advised that Mr. Shahean's unit conducted an independent investigation of this entire matter back on May 7 when the Department of Justice appeared here to make their budget request, I went over this case in some detail. The Department of Justice was not represented by the Attorney General as is the custom, but by the Associate Attorney General, Mr. Lowell Jensen. At that time I advised Mr. Jensen of my efforts to secure the file of the Office of Professional Responsibility and wrote to Mr. Shahean just on last Friday to be sure that the file was present when Mr. Shahean came.

So it is a matter of concern to me that Mr. Shahean is not here, let alone the file. It is my sense, for the reasons that I have just outlined, that it is necessary that we hear from witnesses who have these kinds of factual matters which bear very directly upon this case.

Mr. Chairman, I would only say a couple of other things before yielding.

When I first talked to Judge Hupp on March 29 by telephone, Judge Hupp told me that at the juncture of the proceedings before his recusal, nothing was in the record to preclude Judge Hupp from giving Mr. O'Rourke a judgment of status as administrative grace. When I talked to Judge Hupp on June 14 to seek to persuade him to come to this hearing on a voluntary basis, Judge Hupp said to me that on the basis of the evidence that he had, he could have granted permanent residency to Michael O'Rourke. Judge Hupp is alleged to have told others flat out that he would have let Michael O'Rourke stay in the United States. There will be testimony about that from others.

But in the context of this case, I set aside what Mr. O'Rourke has done, which has been determined in other tribunals in other proceedings, and I do not challenge any of that, and as I see it, to repeat, that is not the purpose of this kind of a hearing. The purpose of this hearing is to see what was done with the Immigration and Naturalization Service in accordance with the absolute mandatory requirement that everybody in this country receive due process of law.

Thank you, Mr. Chairman.

Senator HATCH. Well, thank you, Senator Specter.

Our first three witnesses today will be Mr. Walter Connery of the Immigration and Naturalization Service, of the Office of Professional Responsibility. He has accompanying him Greg Leo of INS, in charge of congressional affairs; and Mr. Gerald LaSalle, an INS investigator. We are happy to welcome you before the committee this morning and we look forward to taking your testimony.

STATEMENTS OF GREG LEO, DIRECTOR OF CONGRESSIONAL PUBLIC AFFAIRS; WALTER CONNERY, DIRECTOR, OFFICE OF PROFESSIONAL RESPONSIBILITY; LOUIS DeMARTINIS, DEPUTY DIRECTOR; AND GERALD LaSALLE, INVESTIGATOR, IMMIGRATION AND NATURALIZATION SERVICE

Mr. CONNERY. Good morning, Senator Hatch; good morning, Senator Specter.

Mr. LEO. First of all, I would just like to say that Senator Hatch's statement was excellent in recounting the facts of the case. Because the application for certiorari is pending before the Supreme Court, we prefer today not to respond directly to anything that would be, in terms of the merits of the case.

We would be happy, however, to respond in writing to any questions relative to the merits, and to provide the record of the court in this matter.

We would like to——

Senator HATCH. When you are talking about the merits, are you talking about the actual facts?

Mr. LEO. Yes, sir, the facts, that is correct.

Senator HATCH. Does that mean that we are not able to explore why the INS agents pursued Judge Hupp?

Mr. LEO. No; Senator, we would be happy to discuss that fully here today, and Mr. Walter Connery, our Director of Office of Professional Responsibility, will be happy to discuss this.

But in terms of the actual merits of the case, we have been advised by our General Counsel that it is probably best to respond to that in writing, since the certiorari is pending, and in terms of other matters relative to the Immigration Service, we will be happy to respond fully, indeed, to the committee's questions.

I would like to introduce Mr. Connery.

STATEMENT OF WALTER CONNERY

Mr. CONNERY. Good morning, Senators, ladies and gentlemen.

I am a bit puzzled by this hearing. I have been in law enforcement for 30 years. I have been an executive officer of the city of New York Police Department, worked for a number of police commissioners on the direct staff.

I would like to indicate that one of my most important formal positions was department advocate, or prosecutor for that department. I had 12 attorneys, approximately 12 attorneys working for me on my staff, and we were in charge of all administrative, which is what we are talking about here, an administrative investigation, all administrative misconduct prosecutions for the entire city of New York Police Department. That consists of 24,000 uniformed officers, Senator, and approximately 10,000 civilians, give or take a few thousand civilians.

Now, I am basically a new Washingtonian. I ended my law enforcement career here in January 1980, to come down and take charge of the Immigration and Naturalization Service's Office of Professional Responsibility, which, as you know, Senator, is the Internal Investigations Unit of the Immigration Service.

I found an office that existed up to 1 year before this matter came to our attention, the Hupp matter, that consisted of approximately—of 12 investigators and a clerical support staff working out of Washington, DC, and they had the responsibility of investigating all administrative misconduct matters for the entire Immigration Service.

Now, one of the specific responsibilities they had was to investigate all allegations of misconduct against high Service officials. In fact, it was a very broad responsibility, since it called for the investigation of all allegations of misconduct against supervisors.

But specifically, within that mandate, and specifically mentioned in there, was our requirement to investigate allegations of misconduct against special inquiry offices, which is the official title, or at least was at the time, of Immigration judges.

As I say, I was there about 12½ months, when we received an anonymous allegation. I received a number of anonymous allegations in the New York City Police Department that had to be investigated, and there are various things you look for when you receive an anonymous allegation.

Would you put that chart up, please?

There are many people that——

Senator HATCH. I wonder if we could put that up here, so everybody out there can see it? Well, maybe you need to point to it. Leave it there.

Mr. CONNERY. No——

Senator HATCH. Or you can come up here. Just put it right over in this area. Just so we can see it, and the audience as well.

Mr. CONNERY. There are many people with various motivations that will write anonymous letters. Sometimes they do not like other supervisors, sometimes they do not like who they work for. Whatever reason. But you have a range of information which you will receive, Senator, on an anonymous allegation.

The best would be name, date, location, and details. No signature. The worst, of course, would be location and the details.

In this particular case, in the O'Rourke matter, the anonymous allegation that was received, Senator, had the date that the alleged incident was occurring, the name of the person that was allegedly doing it, namely, the Immigration judge, where it was being done, the location, Philadelphia, PA, and also the details.

The specific details of the allegation was that the man was leaving work half a day every Friday when he was in Philadelphia. But the problem of the allegation, Senator, was the fact that the allegation also said that he was using the excuse that he was doing legal research at another location.

Now, normally in the New York City Police Department if you want to nail some cop who is leaving early, all you do is clock him going out the door, but here you have a person who is an administrative law judge who is apparently doing research at another location. It is like the cop on sick leave, we have done a number of investigations on police officers on sick leave. You have got to follow him.

The man says he cannot work, he is on sick leave for a year, a year and a half, his back is still hurting, and he is trying to get a three-quarter pension, and all of a sudden, when you follow him you find he is playing frisbee on the beach, and that is an actual case.

So in this particular case what had to be done was an automobile surveillance. I told the investigators at the time, do not bother following him, that is too complicated. We can only take one car to devote to this effort, we are not going to put out the huge armada; after all, it was not a criminal allegation, it was only an administrative misconduct allegation.

If it was not for the person's rank, and the fact that we were required to conduct the investigation, we would not have done it. We have better things to do with our time. But we did follow the man, and I instructed the individuals, first of all, to just do a fixed auto surveillance by his home, so that if he left work at 12 o'clock, and it took him an hour and a half to get home, all he would physically have to do is see him enter his domicile, and then they could question him about the cheating of 4 hours of time, at a postdate. That was the basic instruction I gave on this, and then I subsequently had an injury to my right leg, all these injuries I got down here—but in any event, they subsequently did an auto surveillance, and they followed him.

Now, what happened, the judge apparently discovered the auto surveillance, since it was only one car following him. This is a fairly risky operation when you do that type of surveillance, and according to the judge, he thought it might have been someone that was after him because he was conducting a hearing on the

O'Rourke matter, and at that point the investigation had to be terminated. That is our involvement in it.

We normally handle corruption investigations and criminal, civil rights investigations, we put a number of law enforcement officers in jail for violating the rights of Mexicans. We just happened to get involved in this thing, it just happened to be so coincidental.

I am sorry about it. My middle name is Patrick. I was born on St. Patrick's Day. What do you want from me?

Mr. LEO. Mr. LaSalle was the agent who followed Judge Hupp, perhaps he could recount the facts surrounding the actual surveillance.

Mr. LASALLE. My name is Gerald LaSalle, and I am the criminal investigator with the Office of Professional Responsibility. I have been a criminal investigator with the Immigration Service for 12 years, 6 of those years I have been with the Office of Professional Responsibility.

To recount basically what Mr. Connery said, I received the allegation, I was case agent, I conducted a fixed auto surveillance, I had another agent with me, subsequently I conducted an auto surveillance, which was on May 22, 1981. I had another agent with me at the time.

We discovered that the judge had discovered the surveillance, he thought that we were individuals bent on harming him, we notified the judge of the allegation, the reason for the surveillance, and then we subsequently interviewed the judge on June 5, 1981.

Senator HATCH. That is it.

I am going to allow the time for Senator Specter that he wants, but let me just ask you a question about the system generally.

Given the alleged record of Mr. O'Rourke, the activities of this individual, his conduct both inside and outside of our country, the implications of his continued presence in this country, and our country's foreign relations with two of our best friends abroad, why should it take the INS 5 years to deport him?

Is the *O'Rourke* case suggesting that any individual determined enough, and with sufficient resources, can string the Nation's judicial system along for half a decade before being deported? In this particular case, if these allegations are true, I would have to ask, no matter how heinous his needs or ambiguous the record against him, what is the problem with the system here and why has this taken so long?

Mr. LEO. Senator, if I might respond to that.

The immigration laws provide many avenues for due process. Many opportunities are available, both administratively and judicially, for a person with a case pending to have full review.

This case represents a sizable cost to the Service in terms of resources, but we feel that it is absolutely important that a person with our system, dealing with our system of immigration laws, has the opportunity for due process. This, I am sure, is going to hold the record for having gone through every possible avenue of review, all the way up to the Supreme Court, and it is important for our system to have this.

Senator HATCH. You are talking about due process. I would like to know just precisely what due process means in the context of our immigration laws? What does it mean in the context of an indi-

vidual who has knowingly gotten into the country on a false passport? What does due process mean here, in the *O'Rourke* case?

Mr. LEO. In this case, the delay was not really a matter of the Government pursuing the case, or rather Mr. O'Rourke's pursuit of all avenues of due process.

Senator HATCH. He has availed himself of the various opportunities?

Mr. LEO. Exactly.

Senator HATCH. Give us some idea of exactly what you mean.

Mr. LEO. Well, basically it goes through the administrative process first where it is reviewed by the district director and it will then go to the regional office for review. At that point in time, then the individual is able to pursue it through the court system and follow that through all of the appellate layers of review in the process. And in this case all the way up to the Supreme Court.

Senator HATCH. If Judge Hupp had decided not to deport Mr. O'Rourke, would that have ended the process?

Mr. LEO. At that point, I am sure there would not be any—Mr. O'Rourke probably would not have chosen to appeal.

Senator HATCH. Would you have chosen to appeal, in this case?

Mr. LEO. I could not speculate on that, Senator, I am sorry. I do not know if the Government would appeal or not.

Senator HATCH. Well, one of the key issues here is whether Judge Hupp was on the verge of entering an order to not deport Mr. O'Rourke.

Mr. LEO. That is getting into an area which I am not qualified really to discuss today. However, I am sure that this is part of the court's record, and we would be most happy to provide that to the committee.

Senator HATCH. What is the present status of Mr. O'Rourke? Am I correct in assuming that he will be immediately deported if the Supreme Court denies certiorari, this month, in this particular case? Are there any other circumstances that might delay his departure, assuming the court denies certiorari?

Mr. LEO. I can talk generally about the system.

Specifically Senator Specter and Commissioner Nelson have exchanged several letters on this topic. The Immigration Service strongly feels that we need to execute the court's order as soon as possible, barring no other legal orders from the court.

I understand that there is a requirement by one of the levels—I believe it is the circuit court in this matter—giving us a specified amount of time, I believe that is a week, before deportation would be executed. However, if the court were not denied certiorari, both Houses of Congress would be able through the private bill process to request the committee report which would stay deportation until such time that the committees have met on the matter of a private bill.

Senator HATCH. I see.

What is the legal significance of Mr. O'Rourke's having married an American citizen during his presence in the United States? Is Mr. O'Rourke arguing that this ought to be a factor in according him asylum? Tell me a little bit about that.

I understand that he and his wife have alleged a common-law marriage. Though I do not have a Pennsylvania license to practice

law, I understand that Pennsylvania does recognize common-law marriages.

Mr. LEO. Certainly that is a factor in the eyes of the Immigration Service. However, I am not familiar enough in the case to deal with this.

I would be happy to submit for the record an answer to that question. I believe that deals in a significant way with the facts of the case and to probably defer, but I would be happy to respond in writing.

Senator HATCH. I have been personally told by Irish friends of mine in this country that if Mr. O'Rourke is forced to return, he will be in personal jeopardy if forced to leave the United States at this point.

How do you respond to Mr. O'Rourke's alleged concerns and to his wife's concerns in this area?

Mr. LEO. We have asylum grant process in the immigration laws which fully reviews the individual's request for asylum which would be based on the Refugee Act of 1980. If the individual can show that he has a well-founded fear or persecution, that is specific persecution against the individual, then we will and we have in many circumstances granted asylum. I believe this avenue is certainly one that is open to Mr. O'Rourke.

Senator HATCH. In other words, even if certiorari is denied, Mr. O'Rourke still has the avenue of pursuing asylum if he wants to? I thought he had waived his rights to asylum.

Mr. LEO. I am not, again, familiar enough with the case to that point.

Senator HATCH. You are Mr. O'Rourke's attorney, as I understand it, am I right? You are shaking your head no?

Mr. MEYERS. I am not presently his attorney.

Senator HATCH. No; but you have been. You were shaking your head. Tell me what you mean by that.

Mr. MEYERS. Well, the state of the record is that Mr. O'Rourke's claim for asylum and the deportation have been denied at the trial level, were denied at the appellate level, that is the Board of Immigration Appeal.

Senator HATCH. Do you think he is foreclosed from raising the asylum issue if certiorari is denied?

Mr. MEYERS. Unless he could submit a change in circumstances which would enhance his previous claim of asylum, that his persecution, that it occurred subsequent to all of these matters in this hearing, yes, it is foreclosed.

Senator HATCH. All right. Thank you.

Now, Mr. Leo, could you explain in detail the INS' thinking in initiating the investigation of Judge Hupp? What was the motive for this action on your part? I believe, Mr. Connery, you have tried to explain it to a degree.

Is this a common procedure for the Service? You are talking about an administrative law judge. It seems to me that most judges, including administrative law judges, and most lawyers do research, writing, and reading at home as well as on the job. On a Friday afternoon, if Judge Hupp wanted to take a half day off, that does not seem to me to be that big a deal.

Mr. LEO. Let me generally respond.

Senator HATCH. Wasn't having two agents tail him for 125 miles to see where he was going a bit excessive?

Now, maybe the agency has no alternative once the charge is made, but it seems to me they would.

Go ahead.

Mr. LEO. I would like to generally respond then and give it to Mr. Connery who has discussed the specific criteria for when we began an investigation.

Senator HATCH. Sure.

Mr. LEO. But, generally speaking, the Immigration Service is very concerned at rooting out corruption, where have an anonymous allegation of corruption, we take it very seriously, especially when it involves a high individual, high officer in the Service.

Senator HATCH. If you had a similar charge concerning the Federal district court judges or the Federal circuit court judges, in a case like this, do you believe that you would institute the same process?

Mr. LEO. I would say yes.

Mr. CONNERY. No; we do not have jurisdiction over Federal court judges, Senator.

Senator HATCH. Because this judge was in an INS—

Mr. CONNERY. I could not be in a position to say whether we would institute the same process or not because I think we are talking about a member of the judiciary and an important segment certainly of the nonjudiciary, administrative law judges, but there are different matters that they consider which usually, while important to the individual, are a little less weighty than the matters of Federal court judges.

Senator HATCH. I will be honest with you, I share Senator Specter's concern over why in the world two agents would tail an administrative law judge 125 miles, no matter how well intentioned.

You know, that seems to me very unusual.

Mr. CONNERY. It is an unusual distance, I would think, Senator.

Senator HATCH. Especially when the only jurisdiction you have over the judge is because is hearing an INS case.

Mr. CONNERY. No.

Senator HATCH. Well, from where would you get your jurisdiction?

Mr. CONNERY. Jurisdiction over the administrative law judges, they were employees of the Immigration Service.

Senator HATCH. He was appointed by the Service to hear this case?

Mr. CONNERY. No, no. At that point in time, in 1981, Senator, all special inquiry officers, which was their official title, or administrative law judge or immigration judge, were actual Federal employees of the Immigration and Naturalization Service. They were not an independent entity. They were employees of the Service like a District Director would be or Regional Commissioner would be. They were employees.

The allegation therefore was against an employee, namely an Immigration judge. What was a little different about this allegation was the fact that it had an added element, as I indicated, that the person was doing research. It seems to me though, as I look back, that there was some additional confirmation of the fact that the

man was leaving, and it was because of his rank, the specific operations instruction required us to investigate allegations against special inquiry officers or administrative law judges, if you will. That was specifically in the written regulations governing our office and the original approach, I felt, would be just to do a fixed auto surveillance.

I agree it is a little unusual.

Senator HATCH. My summary of this case in my opening remarks, a fair and complete summary in your opinion?

Mr. LEO. Senator, I believe it was, yes.

Senator HATCH. Let me turn to Senator SPECTER.

Senator SPECTER. Mr. Connery, have you ever followed an administrative law judge in the past on the basis of one anonymous complaint?

Mr. CONNERY. Have we ever followed an administrative law judge in the past? We never had a case which would require that, Senator.

Senator HATCH. Have you ever investigated one?

Senator SPECTER. So the answer is no?

Mr. CONNERY. The answer is we never had a case that would require it. I guess the answer is no.

Senator SPECTER. You guess the answer is no.

Mr. CONNERY. I guess the answer is no.

Senator SPECTER. Have you ever followed an administrative law judge for any reason at all?

Mr. CONNERY. I do not believe so, Senator.

Senator SPECTER. You said you received one anonymous complaint.

Mr. CONNERY. Against the administrative law judge, against this judge, one complaint against this judge, Senator, yes.

Senator SPECTER. One anonymous complaint against Judge Hupp?

Mr. CONNERY. Written.

Senator SPECTER. Written. May I see the complaint, please?

Mr. CONNERY. Certainly. I believe we gave you a copy, Senator. We have another one.

Senator SPECTER. Would you mark that as exhibit A, please?

[The document referred to was marked as exhibit A.]

Senator SPECTER. You have a copy to read with me, Mr. Connery?

Mr. CONNERY. I am checking to see, Senator.

Yes.

Senator SPECTER. This document has designated on it C-100 in the upper right-hand corner, Office of Professional Responsibility, United States Immigration and Naturalization Service, 425 Eye Street, Northwest, Washington, DC. 20536.

Gentlemen: I must report to you that every Friday in which United States Immigration Judge Ernest Hupp is stationed in Philadelphia, Pennsylvania, U.S. Immigration and Naturalization Office, he leaves this office between 12 noon and 1 p.m. and drives to his residence in the State of Maryland. Judge Hupp does not take annual leave for these hours but rather portends that he is going to the library either in the Philadelphia Federal Building or the Widener Building, Center City, to do legal research. The real truth is that he always goes to his automobile and drives to Maryland.

Question: Have I read that accurately?

Mr. CONNERY. Yes, you have, Senator.

Senator SPECTER. Mr. Connery, to substantiate this anonymous complaint, would it not have been sufficient to follow Judge Hupp only as far as the library, either in the Philadelphia Federal Building or the Widener Building?

Mr. CONNERY. Senator, that is up to the judgment of the investigator. It is conceivable, I understand what you are saying, that once it was precluded that the individual went to either one of these two locations, then it could be assumed that he was going to his home or to an unauthorized location. I cannot speak for the investigators, but I must assume that they were thinking that he might be going to some other location to do legal research so they wanted to follow him to a location that would be inconsistent with his claim of doing legal research.

Senator SPECTER. But your testimony is that this investigation was initiated because of the complaint which said that he went home instead of going to either the Philadelphia Federal Building or the Widener Building.

Now, is it not true that you could prove that he was not going to either the Philadelphia Federal Building or the Widener Building simply by following him a few blocks in the city of Philadelphia as opposed to following him 125 miles?

Mr. CONNERY. No, it is not exactly true, Senator, because if the individual—

Senator SPECTER. Well, it is true that you could have done enough to satisfy this anonymous complaint by following him only a few blocks, is it not?

Mr. CONNERY. No, Senator, it is not true.

Senator SPECTER. You say there are regulations—

Mr. CONNERY. Senator, may I answer the question, please?

Senator SPECTER. I think you have.

Mr. CONNERY. No, I do not think so.

Senator SPECTER. I have a followup question, if you do not mind.

Mr. CONNERY. Well, I would like to answer the first one.

Senator SPECTER. I think you have.

Senator HATCH. Well, if he has some more to say, let him say it.

Mr. CONNERY. Well, all I would like to say, Senator, is on these types of leave misconduct investigations where there is an allegation that an individual is going to a certain location, it is important to follow them to the actual location that they do go to. So therefore you come up with the answer. You do not leave somebody in the middle of nowhere and then have them come back to you and say, well, I went to XYZ location and I did my research or I did whatever I had to do there. You follow them to the termination of the trip that they are on.

Senator SPECTER. You say there was some additional confirmation? That is what you said a few minutes ago.

Mr. CONNERY. Yes.

Senator SPECTER. Excuse me.

Now, let me ask you a question now.

What beyond this single anonymous complaint was there which constituted additional confirmation?

Mr. CONNERY. Well, Senator, this matter is a little over 3 years old and it is my recollection, and I have to rely upon recollection here, there is an extensive letter in the file which predates the receipt of the anonymous complaint which was received in February 1981 from the District Director to Judge Hupp on the very same subject matter wherein he indicates that he is not going to certify his time and attendance reports because he is absent on Friday.

Now my problem with it is I cannot say whether we received that letter before or after the investigation. But it is my recollection that we received some additional confirmatory material or telephonic information. And whether it was that letter or not, I cannot say, but the letter, if you would assume, and I cannot assume that, if that letter was there at the time that the investigation was conducted, it definitely confirms the allegation.

Senator SPECTER. Well, when we talked about this before, you told me that this investigation was initiated solely on the basis of this anonymous complaint, did you not?

Mr. CONNERY. Yes, and I also indicated the same thought I believe, Senator, that I believed that there was some additional confirmatory—something additional confirmatory but I was uncertain as to it.

Senator SPECTER. No, you did not say to me that there was any additional confirmation, Mr. Connery.

Mr. CONNERY. Well, my recollection is that I either said it to you or your staff in one of the two meetings. There were three meetings on this matter, Senator.

Senator SPECTER. You say there is a letter. May I see the letter?

Mr. CONNERY. The letter from the District Director?

Senator SPECTER. Yes, sir.

Mr. CONNERY. I am sorry, we did not make a copy of the letter, Senator. I am just having a little difficulty locating it. It is here in the file.

[Pause.]

Let me make sure it is the right one.

[Pause.]

Senator SPECTER. Mr. Connery, do you have any problems being sworn in this proceeding?

Mr. CONNERY. I do not know, Senator. I came here as a voluntary witness and I do not know whether I should be sworn or not without legal counsel. I do not know where we are going here.

Senator HATCH. I do not see any reason why you cannot be sworn.

Mr. CONNERY. I have never testified before a hearing before. I have no problem with it.

Senator SPECTER. Well, Mr. Chairman, I would like to have the witness sworn.

Senator HATCH. Why do we not just swear you in.

Mr. CONNERY. Sure.

Senator HATCH. Mr. Connery, do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. CONNERY. I do.

Senator SPECTER. You do not have copies of these, Mr. Connery?

Mr. CONNERY. Pardon me, Senator?

Senator SPECTER. You do not have copies of these before you?

Mr. CONNERY. No, I do not, Senator. I do not believe so.

Senator SPECTER. Would you make copies of these?

We will make copies of these and come back to it in just a moment so that you can have a copy before you.

When you received this anonymous letter, Mr. Connery, did you at that point make any inquiry with anybody who had knowledge or potential knowledge of Judge Hupp's activities in Philadelphia as to whether he did in fact leave early every Friday?

Mr. CONNERY. Senator, when I received the allegation, when the allegation came into my office, it was processed, the complaint form was made out. I believe my Deputy Director was present and it was assigned to an investigator. That is their responsibility.

Senator SPECTER. Now answer my question.

Mr. CONNERY. Yes, Senator?

Senator SPECTER. Answer my question.

Mr. CONNERY. Would you repeat it, please?

Senator SPECTER. When you received this anonymous written complaint, did you check with anybody in Philadelphia who would have had a basis for knowing what Judge Hupp did, to see if he left every Friday when he was stationed at the Philadelphia Immigration and Naturalization Office?

Mr. CONNERY. Did I do that personally, Senator? You mean did I do that?

Senator SPECTER. Well, let us start with you personally.

Mr. CONNERY. No.

Senator SPECTER. Did anybody do that pursuant to your direction?

Mr. CONNERY. I do not recall, Senator.

Senator SPECTER. Well, think about it for a minute.

Mr. CONNERY. I am thinking about it.

Senator SPECTER. Did you or did you not tell somebody to check if anybody in Philadelphia knew that he was leaving early?

Mr. CONNERY. Senator, I answered that, I do not recall.

Senator SPECTER. Would that not have been a pretty important thing to do before authorizing an automobile surveillance to follow a judge 125 miles as a matter of basic investigative technique?

Mr. CONNERY. Senator, the case is assigned to an investigator to investigate.

Senator SPECTER. You are the supervisor.

Mr. CONNERY. I am the supervisor of the office.

Senator SPECTER. Did you assign the case to Mr. LaSalle?

Mr. CONNERY. Correct.

Senator SPECTER. Mr. LaSalle, did you make any inquiry to anybody in the Philadelphia office to see if anybody said that Judge Hupp left every Friday or any Friday?

Mr. LASALLE. No, sir.

Senator SPECTER. Mr. Connery directed you to do that?

Mr. LASALLE. No, sir.

Senator SPECTER. Why did you not do that? Would that not have been a threshold line of investigation before following a Federal administrative law judge 125 miles?

Mr. LASALLE. I wanted to keep the information contained within the Office of Professional Responsibility. In addition, I did not want

to compromise the investigation in not knowing who I would ask that may then relay that information on to the judge.

Senator SPECTER. How about asking the District Director, Lyle L. Karn who had sent this memorandum questioning something or other. You trusted Mr. Karn, did you not?

Mr. LASALLE. No, sir.

Senator SPECTER. You did not trust Mr. Karn?

Mr. LASALLE. No. Let me rephrase that answer. When I received information where allegations of misconduct—we did not release that information to the District Director in an attempt to prove or disprove the allegation.

Senator SPECTER. Did you ever talk to the District Director Mr. Karn about this case?

Mr. LASALLE. Senator, I recall speaking to Mr. Karn, I believe it was after the case when I was in Philadelphia on another matter. And I think it is at that time I may have retrieved this information. Now, I am not certain.

Senator SPECTER. Mr. Connery, did you ever talk to Mr. Karn about this case?

Mr. CONNERY. I believe after the case, after there was some—I seem to recall speaking to him after the case was over, our aspect of the case was over as to the fact, I think the District Director called me or I think he called me and mentioned, and told me that the judge was conducting this hearing on Michael O'Rourke and there was a conversation briefly about that. And that is I believe the only—

Senator SPECTER. So you talked to Karn after the case was over?

Mr. CONNERY. After the incident was over.

Senator SPECTER. Not before you initiated the investigation?

Mr. CONNERY. I do not believe so.

Senator SPECTER. Well, if you had seen these letters dated October 7, 1980, and October 30, 1980, before you initiated the investigation, you would have talked to Mr. Karn before you initiated the investigation, would you not?

Mr. CONNERY. I do not know that I necessarily would have, Senator, because there were a number of other cases in the office. We had well over 100-and-some-odd cases.

Senator SPECTER. Any involving an administrative law judge?

Mr. CONNERY. No. Some other higher Service officials though.

Senator SPECTER. Excuse me?

Mr. CONNERY. Other Service officials, but not administrative law judges.

Senator SPECTER. None with as high a ranking official as this one?

Mr. CONNERY. Oh, I think there was some involving higher ranking officials, yes.

Senator SPECTER. Such as what?

Mr. CONNERY. A District Director, which is a higher ranking official.

Senator SPECTER. I do not think it is.

Mr. CONNERY. Well—

Senator SPECTER. I think an administrative law judge who has to make judicial decisions is a higher ranking official than a District Director.

Mr. CONNERY. In the hierarchy of the Service at the time, I think District Directors were higher ranking, but I cannot argue with you on that, Senator.

Senator SPECTER. But you did not talk to Mr. Karn, as best you recollected at this moment, prior to initiating this investigation?

Mr. CONNERY. I did not; no. I did not, Senator.

Senator SPECTER. And you are not sure whether you saw these memos from Mr. Karn prior to initiating this investigation?

Mr. CONNERY. No, I honestly am not sure, Senator.

Senator SPECTER. So you might not have had any additional confirmation beyond this single anonymous complaint?

Mr. CONNERY. That is possible, Senator, yes.

Senator SPECTER. So when you talked about additional confirmation beyond the letter, you might not have had any such additional confirmation at the time you initiated the complaint.

Mr. CONNERY. That is the puzzling aspect, Senator, and I am trying to be as frank as I can with you on this. I do not know whether we have this letter at the time. It seems to me there was something else, some additional confirmation. Whether it was by telephone or some other information, I do not know. It is not present—

Senator SPECTER. But you do not know whether you had additional confirmation or not?

Mr. CONNERY. We cannot say so, Senator.

Senator SPECTER. Going back to this single anonymous complaint. It said he, referring to Judge Hupp, leaves this office between 12 noon and 1 p.m., and drives to his residence in the State of Maryland. Now, you have referred to this, as I understand your testimony, as a reliable appearing anonymous complaint, right?

Mr. CONNERY. As far as anonymous complaints go, it has a lot of elements in it, Senator.

Senator SPECTER. As far as anonymous complaints go. Anonymous complaints are really not too hot generally, are they? Not as good as somebody who will stand up and name names and identify himself in making the complaint.

Mr. CONNERY. That is true. But some people do not want to do that.

Senator SPECTER. OK.

So you have an anonymous complaint saying that Judge Hupp "drives to his residence in the State of Maryland from Philadelphia."

Now, how could anybody know whether Judge Hupp drove to his residence from Philadelphia unless that person had followed him? How could he know where he would go? How could that be anything more than raw surmise?

Mr. CONNERY. Well, Senator, the interesting thing about that complaint, it is probably an insider complaint since it was not only addressed to our office, but it had the ZIP Code of the office on it, and they named the judge, they named his routine. It is possible that the judge could have made a remark in the office or said something, I cannot surmise, but it looks to me like it is an insider-type complaint.

Senator SPECTER. Well, anything is possible, but when you evaluate reliability of a complaint, and especially an anonymous com-

plaint, how in the world could you attach any reliability to an assertion made by an anonymous complainant that a man drove from Philadelphia to Maryland because that would require his following him, and he could not possibly know that on every Friday that he was in Philadelphia.

Is it not plain that on the face of the complaint that it is surmise and conjecture and speculation?

Mr. CONNERY. No, it is not, Senator, because when you are looking at employee complaints, you have certain elements to look for. And in this particular one, the individual is named, the nature of the act is named, the time that it is taking place is named, and then the other portion, that he is going to his home, the employee could have learned that by a conversation. If indeed the complaint was sent by an employee, and I suspect it probably was.

Senator SPECTER. He could have learned it from a conversation from Judge Hupp.

Mr. CONNERY. He could have learned it hearing the judge having a conversation on the phone with someone else saying he is going to be at a certain location. These types of anonymous complaints, Senator, I have seen them happen a number of times.

Again, especially in the New York City Police Department, people are afraid to put their names on them, and a lot of times they go nowhere, but sometimes they lead you on to important matters. So they do have to be investigated.

Senator SPECTER. Is there not a big difference between investigating a policeman in New York City and investigating an administrative law judge, a Federal administrative law judge?

Mr. CONNERY. Well, yes and no. The general precepts of doing an administrative investigation and the basis upon which you base an administrative investigation are rather entirely different than when you do a criminal investigation. You are not looking for the same standard of probable cause. You are not going to put anybody in jail. The worst that would happen out of an administrative investigation is the person would lose his job.

Senator SPECTER. There is no such thing as probable cause on conducting an investigation, is there?

Mr. CONNERY. Pardon me?

Senator SPECTER. There is no such thing in law as a requirement of probable cause to conduct an investigation.

Mr. CONNERY. Now, you would have to talk—you would have to reasonably suspect that the individual was committing some kind of misconduct. It would be an administrative determination as to whether you were going to devote resources to this particular allegation, whether it be criminal or whether it be administrative.

Senator SPECTER. This anonymous complaint says that he must report that every Friday in which Judge Hupp sits in trial, he goes home early.

Did you check to see if Judge Hupp ever sat there on a Friday?

Mr. CONNERY. I did not check those things out, no.

Senator SPECTER. Did you direct anyone to check if Judge Hupp sat in Philadelphia on a Friday?

Mr. CONNERY. They had to determine his schedule.

Senator SPECTER. Now answer my question.

Mr. CONNERY. Pardon me, Senator?

Senator SPECTER. My question was, Did you ever direct anybody to see if Judge Hupp sat in Philadelphia on a Friday?

Mr. CONNERY. Did I personally direct anybody? No, I did not. Because that would be the job of the investigator.

Senator SPECTER. Prior to initiating this surveillance, Mr. LaSalle, did you check to see if Judge Hupp sat in Philadelphia on many Fridays?

Mr. LASALLE. I was aware that Philadelphia, among the other cities, were in Judge Hupp's circuit, so he would hear cases in Philadelphia as well as Baltimore, Pittsburgh, et cetera.

Senator SPECTER. Now answer my question.

Mr. LASALLE. I thought I did.

Senator SPECTER. No. My question was, did you ever check to see if Judge Hupp sat in Philadelphia on many Fridays? That was my question. Prior to initiating the surveillance, did you take a look at this letter and try to check out any points of verification to see if Judge Hupp sat in Philadelphia on Fridays?

Mr. LASALLE. No.

Senator SPECTER. Mr. Connery, did you make any determination prior to initiating this investigation that Judge Hupp had not taken annual leave days on occasions when he sat in Philadelphia?

Mr. CONNERY. No, I did not, Senator.

Senator SPECTER. Because if he had taken annual leave days, there would be nothing wrong with doing anything he chose if he was on his own time, right?

Mr. CONNERY. Perfectly correct.

Senator SPECTER. Mr. Leo, in your comments you referred to an allegation of corruption, I believe.

Are you saying that this case involves an allegation of corruption against Judge Hupp?

Mr. LEO. Yes, Senator.

Mr. CONNERY. I would disagree with that. It does not involve an allegation.

Senator SPECTER. I know you disagree with it, Mr. Connery, but there is no question pending to you at this time. You have already testified—

Mr. LEO. There is an allegation made that Judge Hupp's time was not accounted for, that he was not in a place where he said he was. There is enough of an allegation made that we had an investigator, yes.

Senator SPECTER. You heard Mr. Connery testify earlier that this was not a criminal investigation.

Mr. CONNERY. Yes, Senator.

Senator SPECTER. Well, if corruption was involved, there would be a criminal investigation?

Mr. LEO. It had not been found. I mean, it was a matter that the Service was investigating.

Senator SPECTER. I am talking about an allegation of crime. If it were an allegation of corruption, it would be an allegation of crime which would mean criminal investigation, would it not?

Mr. LEO. Yes.

Senator SPECTER. But this really was not a criminal investigation? Mr. Connery was right about that, do you not think?

Mr. LEO. I believe it was an administrative investigation. There had been no—basically, we were responding to an allegation that was being made.

Senator SPECTER. So there was no allegation of corruption?

Mr. LEO. That is correct.

Mr. CONNERY. I would like to reaffirm that, Senator, if you do not mind.

Senator SPECTER. You talked about a written regulation which required you to follow Judge Hupp under these circumstances.

Mr. CONNERY. Written operations instructions, Senator, which required us—

Senator SPECTER. Written what? You called a written—

Mr. CONNERY. It is called an operations instruction of the Immigration Service, which at that time required us to specifically investigate certain types of allegations, including allegations against supervisors, and specifically mentioned allegations against special inquiry officers, or Immigration judges.

Senator SPECTER. Had you referred to that as a written-out allegation?

Mr. CONNERY. It is written, Senator, and we are going to attempt to procure a copy for you.

Senator SPECTER. My question is, Had you referred to that as a written regulation?

Mr. CONNERY. I do not understand.

Senator SPECTER. Had you earlier, in your testimony, about a half an hour ago—

Mr. CONNERY. Yes, it is a written regulation.

Senator SPECTER. Do you have a copy with you?

Mr. CONNERY. Not with me, no. It is an old one. It has been revised since then.

Senator SPECTER. Could you send for it, please?

Mr. CONNERY. Absolutely, Senator.

Senator SPECTER. I would like to have it before we finish this hearing this morning.

Mr. CONNERY. I do not know if we could get it then, because it is an old regulation, that came out about 6 or 7 years ago.

Senator SPECTER. I do not know if you could get it, either, but will you try?

Mr. CONNERY. Oh, I will.

Senator SPECTER. Right now?

Mr. CONNERY. We will try, Senator Specter.

Senator SPECTER. Would you send for it right now, so we could pursue it in this hearing?

Mr. CONNERY. Certainly. Does somebody want to go and get it?

[Pause.]

Senator SPECTER. You testified that if you had not been required to conduct this investigation by virtue of that written regulation, you would not have put the surveillance on Judge Hupp?

Listen to my question. My question is very narrow. It is whether you testified to that a few moments ago, that if you had not been required to do it, you would not have had him followed?

Mr. CONNERY. I do not know, Senator, this is taking on a rather adversary situation here. If I had not been required to do it, if it was someone else's obligation to do it, I would have been only too

happy to do it, because it was basically an administrative matter, we had other things to handle, and I would just as soon not have committed resources to it.

Yes, if I had not been required to do it, I would have preferred having someone else do it, a regional person do it, or something of that nature. You are correct.

Senator SPECTER. So your testimony is that you were required to do it under written regulations?

Mr. CONNERY. Absolutely, Senator, and we will get you a copy of it. It may take some time, but you will have it.

Senator SPECTER. When you received this anonymous complaint, did you check to see where the Philadelphia Federal Building was?

Mr. CONNERY. No, I did not.

Senator SPECTER. Is it not a fact that Judge Hupp was in the Philadelphia Federal Building, so that if he went to do research, he would be in the same building?

Mr. CONNERY. I am not aware of that, Senator.

Senator SPECTER. But you did not try to find out about it?

Mr. CONNERY. Senator, my job is to administer the total program, not to get into the effects of it—

Senator SPECTER. You made the judgment to initiate a surveillance. That was your decision, was it not, Mr. Connery?

Mr. CONNERY. The decision I made was to institute a fixed auto surveillance outside of the judge's home.

Senator SPECTER. You never issued an instruction to have a tailing?

Mr. CONNERY. I do not believe I particularly organized that. I was out sick for a period of quite a few months, I had some problems with my right leg, and I think that was done in the interim by my Deputy Director.

Senator SPECTER. Are you sure?

Mr. CONNERY. I say I think so.

Senator SPECTER. Is your Deputy Director here?

Mr. CONNERY. Yes, he is.

Senator SPECTER. Would you step forward, Mr. Deputy Director, please?

Would you swear him, Orrin?

Senator HATCH. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. DEMARTINIS. I do.

Senator SPECTER. Would you state your full name for the record?

Mr. DEMARTINIS. My name is Lewis DeMartinis. At the time I was Deputy Director—

Senator SPECTER. Mr. DeMartinis, was it your decision to have this surveillance to follow Judge Hupp from the Federal Building in Philadelphia to his home in Maryland, about 125 miles?

Mr. DEMARTINIS. I do not recall if it was my decision, but I do recall being present.

Senator SPECTER. Do you think it might have been Mr. Connery's decision?

Mr. DEMARTINIS. It is possible, yes, sir.

Senator SPECTER. Did you make any check on the matters contained in this letter, to see if there was any confirmation of any-

thing in this anonymous letter? Did you check to see if Judge Hupp worked on Fridays?

Mr. DEMARTINIS. Yes, sir, I instructed the investigator to place anonymous calls to Judge Hupp's office on Friday afternoons, to see if he was present.

Senator SPECTER. And what happened?

Mr. DEMARTINIS. Judge Hupp was not present during those calls.

Senator SPECTER. How many Friday afternoons?

Mr. DEMARTINIS. I do not recall exactly. I would guess about three.

Senator SPECTER. You have some records about that? Do you make records when you do investigative work?

Mr. DEMARTINIS. Well, that would be the investigator's responsibility. I personally do not make records, no, sir.

Senator SPECTER. Mr. LaSalle, you never told me anything about making calls. Did you make some calls to Judge Hupp's office?

Mr. LASALLE. I think I told you I had one of the secretaries call on Fridays, to see if the judge was in, because you had questioned me on the gap of time, and I had indicated that we had one of the secretaries call, and if the judge was going to be in——

Senator SPECTER. You did not tell me you had secretaries call, but tell me now.

Mr. LASALLE. OK. Since the judge was on a circuit, OK, and he would be in a travel status, I had the secretary call on Fridays.

Senator SPECTER. Well, let us nail it down. Did you ever know that he was supposed to be in Philadelphia on a Friday afternoon, when he had not taken administrative leave, and he was not assigned some place else where you could make calls and find him absent?

Mr. LASALLE. No, I could not know that, without releasing the information, or asking the District Director for his schedule, which I did not want to do.

Senator SPECTER. So you never had any confirmation that Judge Hupp was absent on a Friday afternoon, when he should have been in Philadelphia?

Mr. LASALLE. No, the only thing we did was have a pretense call by one of our secretaries, to the Philadelphia office, to ask for Judge Hupp.

Senator SPECTER. But you are saying it did not prove anything, because you did not know that he was supposed to be there.

Mr. LASALLE. Well, if he was there, if he was going to be there, usually the call would be made on a Thursday. If he was going to be there, then, and that——

Senator SPECTER. Wait a minute, the call was made on Thursdays, and not on Fridays?

Mr. LASALLE. Right.

Senator SPECTER. The calls were made on Thursday?

Mr. LASALLE. Excuse me?

Senator SPECTER. The calls were made on Thursdays?

Mr. LASALLE. Correct, because he had a schedule, and I had asked—instructed, rather, the secretary to call Philadelphia, to see if the judge would be in tomorrow. If he was going to be in Philadelphia, then we could have instituted the mobile surveillance. But

if he was going to be in the circuit, then that would be a travel status, then he would have portal-to-portal time.

Senator SPECTER. Are you saying that you had the calls made on Thursday, to see if he would be in on Friday, so that you could make the surveillance?

Mr. LASALLE. Right. At the point we decided to go the mobile surveillance.

Senator SPECTER. But did you ever have a call made on Friday, when you knew that he was supposed to be in Philadelphia and you found him not in Philadelphia?

Mr. LASALLE. No, sir.

Senator SPECTER. Mr. Connery, you made mention of a surveillance of—you had ordered a surveillance of Judge Hupp's house?

Mr. CONNERY. Fixed auto surveillance.

Senator SPECTER. A fixed auto surveillance of his home?

Mr. CONNERY. No, outside of the vicinity so that they could clock the judge in when he arrived in the vicinity of the block.

Senator SPECTER. You are talking about a fixed auto surveillance which would have what range?

Mr. CONNERY. You would place a vehicle within viewing distance of the general area of the individual's home.

Senator SPECTER. Of his home?

Mr. CONNERY. Of where he would logically come upon leaving work and you would then clock the individual, merely observe the car with the individual and it going into the driveway or parking or entering the building. And that is the sum and substance of it as opposed to following someone.

Senator SPECTER. On how many occasions did you have the fixed auto surveillance?

Mr. CONNERY. I recall telling him to do it—I set them up to do it once. And whether they repeated it or not, I do not believe they repeated it, it was done once I believe.

Senator SPECTER. And what was the finding of that fixed auto surveillance?

Mr. CONNERY. It was negative.

Senator SPECTER. And it was after the fixed auto surveillance was negative that you had him trailed?

Mr. CONNERY. I believe so, yes. That is correct, Senator.

Senator SPECTER. Was it not sufficient for you, if you had a negative fixed auto surveillance on the basis of the anonymous complaint, to forget about this thing?

Mr. CONNERY. I believe—now, I cannot—I was not—of the fixed auto surveillance, I believe the judge on that date left work and did not go back to his house. And that was the problem.

Now, I cannot—again, I am speculating.

Senator SPECTER. What was the problem?

Mr. CONNERY. The problem was that on the date in question, and I think the investigator is perhaps the best one to answer that question on the fixed auto surveillance, as I recall, and if I am correct, the judge did leave the office but he did not come back to his home.

Senator SPECTER. Mr. Connery, if there is some regulation requiring you to follow up on anonymous complaints against administrative law judges, would not you have taken sufficient action so that

as a matter of your discretionary judgment you could forget about this kind of an anonymous complaint?

Mr. CONNERY. In other words would that have been sufficient to drop the investigation? It could well have been, yes.

Senator SPECTER. Did you have some writings, some documents on this fixed auto surveillance?

Mr. CONNERY. I believe the investigator has some.

Senator SPECTER. May I see them, please?

Mr. Connery, Mr. LaSalle, is it correct that there was only one fixed auto surveillance?

Mr. CONNERY. That is correct, Senator.

Mr. LASALLE. That is correct, Senator.

Senator SPECTER. What was the date when you followed Judge Hupp?

Mr. LASALLE. May 22, 1981.

Senator SPECTER. And this fixed auto surveillance was on March 6, 1981?

Mr. LASALLE. Correct.

Senator SPECTER. What happened during the intervening March, April, May, almost 3 full months, Mr. Connery, for this very important charge?

Mr. CONNERY. Is that addressed to me?

Senator SPECTER. Why was this very important matter not investigated between March 6 and May 29?

Mr. CONNERY. Because in the galaxy of matters it was not that important, Senator. There was a major corruption investigation going on of considerable magnitude.

Senator SPECTER. You had some other important things to do with your investigative resources?

Mr. CONNERY. That is correct, Senator.

Senator SPECTER. Did you make any effort at any time up until this moment to find out who was the source of this anonymous letter?

Mr. CONNERY. No, Senator.

Senator SPECTER. Did you ever ask Mr. Karn if he wrote the letter?

Mr. CONNERY. No, Senator.

Senator SPECTER. Did you ask Mr. Karn, did he ask that the letter be written?

Mr. CONNERY. No, Senator.

Senator SPECTER. Did you ever ask Mr. Karn if he wanted to get Judge Hupp off this O'Rourke case?

Mr. CONNERY. No, Senator.

Senator SPECTER. Would you consider it wrongful conduct if Mr. Karn tried to get Judge Hupp off this O'Rourke case? Something worthy of the investigation of your office, for example, as more serious than leaving work early?

Mr. CONNERY. That is a hypothetical question, Senator.

Senator SPECTER. Just answer the question without categorizing it, if you would please.

Mr. CONNERY. Would I consider it if the person tried to maneuver a judge off the case or for improper motivations—certainly.

Senator SPECTER. Mr. Leo, I have written a number of times to Commissioner Nelsen and was surprised to find that he was going

to order deportation before the Senate Judiciary Committee had concluded its work. And I wrote him back and asked him if he would give us 3 working days, considering that we have some other items on our agenda, to decide what to do about this matter so that we did not find Mr. O'Rourke deported out from under our noses.

Surprising that he would not give us that, he wrote back and said he would not give us 3 days. And I wrote to him again about a month ago and asked if he would clear it with the committee.

Do you know whether Commissioner Nelsen will give the Senate Judiciary Committee the courtesy of advising us and giving us a chance to conclude our work before he deports O'Rourke if, as and when the U.S. Supreme Court denies cert?

Mr. LEO. Senator, we would be happy to provide every courtesy possible in this case in terms of the committee to consider this.

I believe the 3-day requirement though has been superseded by the district courts, a week. The district court wants a week beyond the time that the certiorari has been found. I believe that has already been set.

However, the Justice Department and the Immigration Service strongly feel that any more delays are not in the best interest of this case, that this case has run the complete due process course of both the administrative and the judicial system and that any further administrative delay would not be acceptable.

Senator SPECTOR. Do you think the Senate Judiciary Committee has an appropriate role on evaluating due process and the like of this committee's oversight responsibility over Immigration and Naturalization Service?

Mr. LEO. Absolutely, Senator; yes. I feel that this committee does have the ability.

Senator SPECTOR. So that due process route would not have been covered, absent the completion by the Judiciary Committee of what inquiry it chooses to make?

Mr. LEO. When the court has executed an order, it is our obligation to execute that order. And it is our feeling that because of the complete run of the administrative and the judicial process in this case that any additional administrative delay would really not be in tune with what the courts—

Senator SPECTOR. Immigration and Naturalization Service has an obligation to carry out the court's order without any discretion on your part. You are obligated to do it at the earliest possible moment.

Mr. LEO. That is our belief, Senator, yes.

Senator SPECTOR. Oh come now, Mr. Leo. You do not have any discretion as to when you execute a deportation order?

Mr. LEO. Certainly we do have discretion in that regard.

Senator SPECTOR. Well, does the Senate Judiciary Committee not have a legitimate concern to finish its inquiry before you act to deport this man? We are not responsible for this 5 years of delay. I started writing letters 13 months ago, I have written a whole stack of them and I have not gotten any answer. We have to bring you in by your heels to get any information at all and then it is like pulling teeth.

Mr. LEO. We are committed to execute the court's order, Senator, and I believe that the—that one of the courts has asked for the

week, that is my most recent information. It is my understanding that Commissioner Nelsen would not—would deny the additional 3-day administrative delay.

Senator SPECTOR. It is your understanding that Commissioner Nelsen will act to deport even though the Senate Judiciary Committee has not completed its work on the O'Rourke matter to see if due process of law has been accorded?

Mr. LEO. Yes, sir, Senator; that is my understanding. That is correct. I would just like to say that in terms of the Judge Hupp's recusal, the court did look at that and they found that it was absolutely without merit, regardless of the recusal. This case is an example of a case that has been able to run the entire course administratively and judicially and we have to put our confidence in the courts. The courts have fully examined this question, and for us then to disregard their finding would not be responsible on our part.

Senator SPECTOR. To what extent have the courts fully examined this question, Mr. Leo?

Mr. LEO. It is my understanding that it has been through the entire judicial process, through the appeals, all the way up to a pending cert before the Supreme Court. The Supreme Court will decide whether to grant the certiorari and whether to look at the matter.

Senator SPECTER. Mr. Leo, when you assert that it has been, as you say, fully examined, would you be surprised to hear that there was no evidentiary hearing at any stage on this issue as to Judge Hupp's recusal, that no court has ever heard a single witness, and that the Court of Appeals for the Second Circuit dismissed this issue with one sentence? Would that surprise you?

Mr. LEO. I was aware of that aspect of the court's decision.

Senator SPECTER. Well, how can you say it has been fully examined?

Mr. LEO. I was aware that they did find that it was absolutely without merit and it said so in that finding of the court.

Senator SPECTER. The court of appeals said "Petitioner's due process claims arising out of Judge Hupp's decision to recuse himself are so lacking in substance as to merit no discussion."

Mr. LEO. No discussion in the decision of the court. I have to assume that the court took a look at those factors in order to make that statement.

Senator SPECTER. Well, you are making an incorrect assumption because there was never a single witness heard on this subject. Nobody has ever made an inquiry into this at any stage of the judicial proceeding, and it is a very common matter for a court in a one-sentence line, when they choose to do so, to toss it off saying it is without merit. But if there had been a judicial inquiry on this subject, I would have a very different view of it. If there had been a hearing, if these witnesses had been examined, if there had been a conclusion, a finding of fact, it has never been done in this case.

Have you ever testified, Mr. Connery, anywhere on this issue?

Mr. CONNERY. No, sir.

Senator SPECTER. Thank you very much.

Thank you, Mr. Chairman.

Senator HATCH. Thank you, Senator Specter.

Let me say that I am not sure the Judiciary Committee can hold up deportation unless we are willing to file or go through the process of a special bill.

On the other hand, I believe Senator Specter has every right to look into these matters as a member of this committee. I can see some of the problems that exist.

I want to thank each of you for being here. I appreciate having your testimony and appreciate being able to explore these matters with you, and thank you for coming.

Senator SPECTER. Will you gentlemen please stay until that document comes so that we can finish that open line?

Mr. LEO. Senator, may I just say in conclusion that we have been as responsive as possible to Senator Specter throughout this process. It has amounted to a considerable amount of work, and that there has been a number of inquiries responding back and forth. We will continue to be responsive to the Senator, and I am hopeful that we can answer his questions.

In light of the fact the Immigration Service is beating a major reform bill and has a number of other questions, I would just hope that this committee would realize that sometimes things do take a little bit of time. There is a little bit of delay but we are committed—are fully committed to being responsive to the Senator and the committee.

Senator HATCH. May I ask one final clarifying question?

Am I fair in assuming that you have concluded there is no evidence that Judge Hupp was in any way involved in corruption or of violating any particular oath of office or obligation?

Mr. CONNERY. Senator, I would like to make that very clear.

This incident occurred in 1981 when Mr. Leo was not present in the Immigration Service at that time. There is no question that there was no—this is an administrative misconduct allegation, at max the individual, even if we assume it to be true, was leaving for 4 hours because of his rank. It could involve a considerable sum of money, but that is not the type—that is strictly administrative. It is time and leave abuse, that is all it is.

Senator HATCH. You did not conclude that he was participating in corruption?

Mr. CONNERY. Absolutely not. No, that is not correct at all. As I say, it was an administrative misconduct investigation and nothing more.

Senator HATCH. I had concluded that from your comments. I just wanted to make it clear.

Mr. CONNERY. I appreciate your opportunity to personally reaffirm that, Senator.

Mr. LEO. I stand corrected. In 1981 I was not with the Service.

In sum, I would say that the Judge Hupp matter is an unfortunate coincidence bearing no impact at all on the case, on the *O'Rourke* case.

Senator HATCH. It seems to me, with an anonymous complaint like that, you ought to have gone to the judge and confronted him with it, asking him what the problem was. I do not know. I hope we do not have that kind of practice in the future. I do not think you would want somebody tailing you, if you had taken off a few Fridays even though you should not have done it.

My experience is with lawyers and judges whose work does not end after an 8-hour day. They have to work at home, something that is true for Senators too. I would hate to tail some of these Senators on any day. But be that as it may, thank you for coming and for your willingness to answer these questions.

Senator SPECTER. Mr. Connery, one final question.

Did you have these three documents in your file that you gave me today when you and I talked before?

Mr. CONNERY. Which ones, Senator?

Senator SPECTER. The ones dated——

Mr. CONNERY. Yes.

Senator SPECTER. Dated October 7 and October 30.

Mr. CONNERY. Yes, they were in there.

Senator SPECTER. They do not seem to be numbered like the rest of the documents in the file.

Mr. CONNERY. No, they are not numbered, Senator.

Senator SPECTER. They came out of your same file?

Mr. CONNERY. The same file. The only ones that are numbered usually are the investigators' item sheets.

Senator HATCH. Thank you, gentlemen. Thank you for being here.

Our next additional witnesses will be Mr. Willard Meyers, who is an attorney; Mrs. Margie O'Rourke, and Prof. Charles Rice from the University of Notre Dame.

Mr. Connery, I wonder if you and Mr. LaSalle would stay so that you could respond to any questions that might come up as a result of this testimony?

Mr. CONNERY. We will sit in the audience.

Senator HATCH. That would be fine.

Mr. CONNERY. Thank you.

Senator HATCH. I would like to swear all three of you in, if I may.

Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you, God?

Mr. MEYERS. I do.

Mrs. O'ROURKE. I do.

Mr. RICE. I do.

Senator HATCH. Professor Rice, we are happy to welcome you before this committee again. You have been a longstanding, very important witness on constitutional matters before our subcommittee. We certainly appreciate the excellent advice you have given to us through the years.

But, with your indulgence, let us begin with Mr. Meyers, then we will go to Mrs. O'Rourke, and then go to you.

I have to apologize to all three of you. I was supposed to be at another meeting a half hour ago, so I am going to turn the hearing over to Senator Specter. He will conclude the hearing for today.

So if you will forgive me, I will learn what you have to say by reading the transcript later.

Go ahead.

TESTIMONY OF WILLARD MEYERS, ATTORNEY; MRS. MARGIE O'ROURKE; JOSEPH A. ROCHE, NATIONAL PRESIDENT, ANCIENT ORDER OF HIBERNIANS IN AMERICA, INC.; AND PROF. CHARLES E. RICE, UNIVERSITY OF NOTRE DAME LAW SCHOOL

Mr. MEYERS. Senator Specter, I think I can just begin by acquainting you with my role in Mr. *O'Rourke's* case.

I served as Mr. O'Rourke's immigration counsel from approximately 1 month after his arrest by the Federal Bureau of Investigation and the Alcohol Tax and Firearms agents in Philadelphia until approximately February 1982, and I was his sole immigration counsel during the critical period of time that this committee and you are looking into.

I think it is important to correct initially some of the statements that were made by Senator Hatch in summarizing this case.

First of all, Mr. O'Rourke has not initiated these proceedings. These proceedings have been initiated by the Immigration and Naturalization Service, and he has chosen to defend himself in every way possible and permissible.

I am not going to, unless directly asked, go into the merits of the case. Like I—like you, Senator Specter, I feel that our concern here is focused on the—what is to me an apparent serious breach of due process and one that I—when I was counsel, was doing everything in my power to determine. I think it is very important to place into perspective, before we get into the facts surrounding this matter, certain information about the Immigration Service which I think is important for this committee to know, and particularly about Judge Hupp's schedule.

My sources of information for this, in the absence of Judge Hupp, are from Judge Hupp himself, from discussions had with Judge Hupp in the course of appearing before him, and subsequent to his recusal in this case, more information was learned.

Let me just begin by acquainting you with, I think, a very important fact about Judge Hupp. Judge Hupp was a resident of the State of Maryland. He initially, when he became a sitting immigration judge, requested that he be posted in Baltimore, since that would have been more convenient to his home. That request was not honored. He was posted and became the resident judge sitting in Philadelphia. It was therefore necessary for him to commute essentially on a weekly basis from Maryland to Philadelphia. He maintained a rented room, I do not recall where, in the city of Philadelphia, to reside in during the week, and he would return home.

Now I think what is essential about this is that Judge Hupp began his week with the Immigration Service by clocking in in the Baltimore office, receiving travel time from Baltimore to Philadelphia when he started his week. Inversely, at the conclusion of each week, he would clock out of Philadelphia and proceed to his home in Baltimore, all under the rules and regulations and all with consent and knowledge, as I am given to understand it, of then Judge Monsanto who was the chief Immigration judge. In other words, Judge Hupp's schedule, as I understand it, was fully known to the chief Immigration judge.

I think another important fact to place in the perspective before we delve into this matter a little more fully is the then existing relationship, the legal relationship between the immigration judge and the Immigration Service.

Prior to the creation essentially of an independent administrative judiciary in the Immigration Service, the immigration judges were assigned and controlled directed by the district director in the office they were sitting. In other words, in this particular instance, Judge Hupp was under the direction and control, at least in what cases he would sit on, et cetera, by Mr. Karn, K-a-r-n. However, his schedule and other matters relating to his assignments in other cases were controlled by Judge Monsanto. He therefore had a sort of schizophrenic administrative setup.

Of prime concern, however, was the fact that district director, Mr. Karn, controlled essentially Judge Hupp's hours and was by regulation, or I should say by operations instruction, which, by the way, Senator, is not a regulation, was required to sign the pay schedules and hours worked on a weekly basis.

Sometime ago Judge Hupp and Mr. Karn began to have a serious problem relating to each other and concerning each other in the Philadelphia district office.

Senator SPECTER [presiding]. Judge Hupp and who?

Mr. MEYERS. And Mr. Karn, the district director.

That problem initially began with a series of cases involving Iranian citizens, and those cases arose in a deportation context during the period of time when the hostage crisis was in full swing, when President Carter had put into effect various Executive orders, the campuses had been scoured by the Immigration Service to discern how many Iranian students were here and what their status was. A number of those cases were initiated in Philadelphia; in fact, the first deportation in the country of an Iranian, or I should say proceeding, was initiated in Philadelphia. It was a subject of great media attention and, in that particular case, I also happened to be counsel. And Judge Hupp in this particular case, and in two others, found in favor of the alien; that is, he terminated deportation proceedings. That created tremendous resentment. The trial——

Senator SPECTER. How do you know that, Mr. Meyers, if at all?

Mr. MEYERS. I can tell you very specifically that the trial attorney then sitting in the case, who was the initial attorney in the *O'Rourke* case, accused Judge Hupp on a written administrative record of being in collusion with me, of acting recklessly, of acting irresponsibly, of——

Senator SPECTER. Who accused you of being in collusion?

Mr. MEYERS. The trial attorney who is the Government representative in a deportation proceeding. I am trying to recall all of the statements that were made on the record.

Senator SPECTER. What happened as a result of that?

Mr. MEYERS. Well, a series of things happened that have been related to me by Judge Hupp. These antedate the *O'Rourke* matter.

Senator SPECTER. Get to the point, if you would, the relationship between Judge Hupp and Mr. Karn, because we have a lot of witnesses.

Mr. MEYERS. I understand.

Mr. Karn, as a result of this incident, denied Judge Hupp the right to use law books in his office, deprived him of a parking place in the Federal parking lot. This series of events led into the *O'Rourke* case. And, very quickly, I will try to come to some of the significant events there.

Initially, O'Rourke—when O'Rourke was arrested, he was arrested as a John Doe. The FBI and the Alcohol Tax and Firearms did not know who he was. They determined that he was an alien and turned him over to the Immigration Service.

Senator SPECTER. Why did they arrest him?

Mr. MEYERS. They arrested him, as I know it, on an anonymous tip that he was wanted, that he was an IRA fugitive, that he was involved actively in a plot to assassinate Margaret Thatcher on a visit that she had planned to make to the United States and—

Senator SPECTER. OK.

That is why he was arrested. Proceed.

Mr. MEYERS. Correct.

Subsequent to that, in a long and tortuous process, the Government—we put the Government to its proof.

Senator SPECTER. Have you finished the part about the relationship between Judge Hupp and Mr. Karn?

Mr. MEYERS. Not at all.

Initially, the Immigration Service did not have a lawful charge against O'Rourke. That charge was challenged in an initial proceeding. Mr. Karn was called as a witness in that proceeding, which is rather extraordinary in administrative proceedings. He was questioned very carefully and—as to many questions he was hesitant to answer, laughter prevailed in the courtroom, and through various sources, which we might term certainly rumor, but I would consider them reliable, Mr. Karn was extremely angry at the fact that Judge Hupp required him to be a witness, subjected him to the kind of cross examination that he had to endure. That set the stage for the case that was to go on for some time.

I think another point is to be made, however, we have focused a great deal of attention on Judge Hupp. There is another source that has always been a source of concern to me, and that is the Office to Combat Terrorism in the State Department. Every aspect of *O'Rourke's* case was reviewed, ordered, and controlled by that office.

Senator SPECTER. How do you know that?

Mr. MEYERS. From Thomas Beloit, special assistant U.S. attorney who was subsequently assigned to the case when the Immigration trial counsel was removed.

There are many instances which I could recite in which direction and control over that case had to be obtained from that committee.

Senator SPECTER. What committee?

Mr. MEYERS. I am sorry. From that office, the Office to Combat Terrorism.

I think it is significant to note that, again without unduly belaboring the point, that we went through a significant series of stages with *O'Rourke's* case; namely, we established that he was an immediate relative of a U.S. citizen, by establishing the marriage to Mrs. O'Rourke. That had to be established and was established.

This created the basis for O'Rourke to be eligible to adjust his status.

Subsequently, that application was made, and a great deal of testimony had been taken, and we reached the crucial hearing in which all that remained essentially were two affidavits to be taken from two State Department witnesses which the Government had requested. It was everyone's assumption and belief that the hearing would be closed after these depositions were submitted to the judge.

At that point in time, I think to all present, especially to both counsels, myself and Mr. Beloit, it was pretty clear which way Judge Hupp was going to rule. And of course, in subsequent statements by the judge, his feelings on that matter have certainly been made clear.

Senator SPECTER. What statements are you referring to?

Mr. MEYERS. Well, the——

Senator SPECTER. The ones I cited earlier?

Mr. MEYERS. The ones that you cited earlier and the ones that Judge Hupp made to me after his recusal in the case.

Senator SPECTER. What, if anything, did Judge Hupp say to you after his recusal in the case?

Mr. MEYERS. Judge Hupp indicated to me——

Senator SPECTER. Not what he indicated; what he said.

Mr. MEYERS. All right. Judge Hupp told me all of the facts as we have them in the various documents, how he had been followed—I must say, Senator Specter, I learned of this matter prior to Judge Hupp's recusal. I quite innocently learned it by talking with an immigration court clerk in the immigration office named Geraldine Bruno.

Senator SPECTER. Mr. Meyers, what did Judge Hupp say to you, if anything?

Mr. MEYERS. Judge Hupp indicated to me that——

Senator SPECTER. He said to you.

Mr. MEYERS. Yes. He told me that he had been followed in the manner indicated; that is, he had been followed closely; that he had been made to feel that he was in threat of his life; that he had gone to a police station in Millersville, MD, that he had reported this incident; that the officers involved in this car had fled in a high-speed chase from pursuing police officers. At that time that he was followed, he believed that he was being followed by IRA terrorists. And that he was going to recuse himself.

Subsequently, I had another conversation with Judge Hupp.

Senator SPECTER. Can you pinpoint it?

Mr. MEYERS. Can I place these——

Senator SPECTER. Excuse me. Can you pinpoint the time and place of your first conversation?

Mr. MEYERS. I cannot precisely. I can tell you——

Senator SPECTER. Do the best you can.

Mr. MEYERS. All right.

I could tell you that I learned of this I believe 2 or 3 days after the events.

Senator SPECTER. Two or three days after Judge Hupp was followed?

Mr. MEYERS. Correct.

Senator SPECTER. Judge Hupp had a conversation with you 2 or 3 days—

Mr. MEYERS. Well, if I could pursue the chain here for a moment I called—then I learned that the FBI was involved. I called a Special Agent for the FBI in the field office in Philadelphia to try to determine what was going on. At the very same time I called the prosecutor, Mr. Beloit, who was in New York City, to try to determine what was going on. We now had an allegation that the judge had been followed; that he had been followed by persons who then appeared to be related to my client. I knew that that could not possibly be true. I wanted to dispel, if at all possible, or get to the bottom of an allegation in which—

Senator SPECTER. Mr. Meyers, would you, for me, please come to the time and place that you had the conversation with Judge Hupp that you referred to as best you can recollect?

Mr. MEYERS. I had two conversations with Judge Hupp. One, as I recall, was subsequent to the events and possibly on the day of his recusal because—

Senator SPECTER. Which was approximately when?

Mr. MEYERS. I believe that that was June 5.

Senator SPECTER. And where did that conversation occur?

Mr. MEYERS. That was a telephone conversation between myself and Judge Hupp.

Senator SPECTER. Who called whom?

Mr. MEYERS. I believe that I called Judge Hupp at that point.

Senator SPECTER. How long did the conversation last?

Mr. MEYERS. I would estimate perhaps 10 to 15 minutes.

Senator SPECTER. Where were you and where was he?

Mr. MEYERS. He at that time I believe, Senator Specter, he was in the Immigration Office in Baltimore, MD.

Senator SPECTER. And where were you?

Mr. MEYERS. And I was in my office in Philadelphia.

Senator SPECTER. And you had a second conversation with him?

Mr. MEYERS. Yes.

Senator SPECTER. Was that in person or by telephone?

Mr. MEYERS. We had numerous conversations after that in person on occasions when—

Senator SPECTER. What else, if anything, did he say to you about this case which you consider to be relevant?

Mr. MEYERS. All right. He indicated to me—

Senator SPECTER. He said to you.

Mr. MEYERS. He told me that after it was revealed to him that the agents who had done the following were in fact working for INS, that he felt—I am repeating his words now—that he felt that they had done this to him personally to remove him from sitting in this case, to cause him to believe that he was being followed by IRA agents or persons associated with them.

Senator SPECTER. Why would he think he was being followed by IRA agents if, as you say, it was so plain to everybody that he was going to find for O'Rourke?

Mr. MEYERS. Senator Specter, I said that to him at the time.

Senator SPECTER. And what did he say to you?

Mr. MEYERS. He said that the manner in which he was being followed, that is that car following him was so visible and so blatant

and so unmarked, and the fact that it had fled from police pursuit——

Senator SPECTER. Deliberate, not inept?

Mr. MEYERS. Correct.

That he tended to believe that those persons could not possibly be related to any governmental agency or they would not have fled.

Senator SPECTER. What else—now, where was this conversation—in person?

Mr. MEYERS. This was repeated initially on the telephone, and it took place in person in the courthouse in Philadelphia. The precise date——

Senator SPECTER. When did it take place in person in the courthouse in Philadelphia, about when?

Mr. MEYERS. It would be a guess on my part, but I believe that it may have been toward the end of June or the middle of July following——

Senator SPECTER. 1981?

Mr. MEYERS. Yes, correct.

Senator SPECTER. That is your best estimate?

Mr. MEYERS. Yes.

Senator SPECTER. And have you now recited the full conversation or the relevant portions thereof as you see it?

Mr. MEYERS. Well, there were more conversations in which the judge made me aware of the background between he and Mr. Karn, which I have related to you earlier. That information——

Senator SPECTER. Tell us what he said to you fixing, as best you can, the time and place.

Mr. MEYERS. He said to me——

Senator SPECTER. And his statements to you as best you can recollect.

Mr. MEYERS. I will.

He said to me at that time——

Senator SPECTER. What time?

Mr. MEYERS. In this conversation I had with him in the courthouse at the end of June or July that there were other facts respecting his relationship with Mr. Karn.

He firmly believed that it was Mr. Karn who had initiated this complaint against him. He indicated to me that Mr. Karn had refused on several occasions to sign his timesheets. These timesheets incidently related to his service when he was sitting as an Immigration judge trying Haitian exclusion cases in Atlanta, GA, in Louisiana and in New Orleans.

He related to me the incidents concerning the removal of the O'Rourke files, which occurred prior to his recusal. He told me that those files had been removed from his office and transported to New York by nonjudicial personnel.

Senator SPECTER. Did he tell you who had done that?

Mr. MEYERS. He did not know. He said he believed that that had been done on the order of Mr. Karn.

He told me of an incident involving Mr. Karn in which Mr. Karn had actively interceded with the Federal judiciary to prevent him from having a parking place for his automobile in the Federal courthouse.

Senator SPECTER. You already testified about that.

Mr. MEYERS. Yes. But what I am trying to do is place that in time perspective.

He testified, or he stated to me that he had been deprived of the right to have lawbooks, essentially interim decisions and other materials that he was rightfully entitled to as an Immigration judge.

Senator SPECTER. Did he ever tell you what he intended to do in this case by way of decision?

Mr. MEYERS. Yes.

Senator SPECTER. Could you get to that?

Mr. MEYERS. Yes.

He said to me absolutely unequivocally without reservation that had this matter gone to conclusion—

Senator SPECTER. Use his words as closely as you can recollect them, would you, please?

Mr. MEYERS. He said you know that I would have given your man the relief sought had I continued to sit in this case. I said, in response to that, I did not know how you were going to rule, but it certainly appeared that you would have done that.

Senator SPECTER. Well, you said to me that he had not yet heard all the evidence and he has been quoted as having said to others that—I used the precise language at the early part of the hearing and I want to be very precise about it, because what he said to me is not what you are testifying to. He said to me, at the time of his recusal, "Nothing in the record would have precluded him from giving O'Rourke adjustment of status as administrative grace." But that is different than him saying that he was going to let him stay in the United States. He said that to me on March 29, and on June 14, when I called him to urge him to come to these hearings, he said on the basis of the evidence he could have granted permanent residency. He did not say he would have, and he has also said that he had other evidence, and that is the relationship of the matter as to how the British would feel about it.

Now, did you explore that with him, and what I am getting at here is, how conclusive was the statement that you have just quoted, was he really looking for more evidence that might have led him to a different conclusion?

Mr. MEYERS. I understand your question, Senator Specter.

Senator SPECTER. I regret the necessity to do this, but we do not have Judge Hupp here. I hope I have him here later.

Mr. MEYERS. I understand.

At the time that these statements were made, and at the time that this hearing was closed, before the removal, recusal of Judge Hupp, I can say to you that Judge Hupp had permitted—the Government wanted to have this testimony from State Department officials concerning the diplomatic consequences of granting Mr. O'Rourke adjustment of status.

Judge Hupp at that time denied that request and said he would consider affidavits. He considered the record closed except for having affidavits or depositions of these two witnesses.

Senator SPECTER. Why would he not hear live testimony if he were going to hear evidentiary matters on the issue?

Mr. MEYERS. He did not want to hear live testimony.

Senator SPECTER. I am asking you if you know why?

Mr. MEYERS. I can only—

Senator SPECTER. It does not make sense that he would not want to hear live witnesses.

Mr. MEYERS. I can only speculate that he considered these witnesses de minimus and simply was permitting the Government to make a record.

Senator SPECTER. In your legal opinion, could that have been sufficient evidence to deny Mr. O'Rourke adjustment of status?

Mr. MEYERS. There is case law which holds that there is a discretionary basis to deny him adjustment of status, yes. It is my feeling, and again to come back to this statement which was your question, when Judge Hupp made this statement to me, it was not qualified as he has made it in the two statements that you have read. It was an unqualified indication that had he remained——

Senator SPECTER. Unqualified statement is what you are saying?

Mr. MEYERS. Yes. Unqualified, unreserved statement that he would have ruled in Mr. O'Rourke's favor.

Senator SPECTER. He told you that on one occasion?

Mr. MEYERS. Well, we had, Senator Specter, as you might imagine, many conversations after this time whenever he and I——

Senator SPECTER. Mr. Meyers, I do not imagine. I want to know how many, if he told you that once or if he told you that more than once.

Mr. MEYERS. I would imagine that—and this is a pure guess on my part.

Senator SPECTER. Well, let us not imagine and let us not guess.

You told me about one conversation. Can you pinpoint that as precisely as possible when and where?

Mr. MEYERS. Yes. In the Philadelphia courthouse at the end of June or early July of 1981.

Senator SPECTER. And where in the Philadelphia courthouse?

Mr. MEYERS. In the hallway out immediately between the two towers of the Federal courthouse. There is a glass adjoining walkway outside the ceremonial court——

Senator SPECTER. You are talking about between the Burn Building and the——

Mr. MEYERS. Correct.

We literally almost ran into each other, and that was the first time we had seen each other face to face since this matter.

Senator SPECTER. When did you last talk to Judge Hupp or when did you last see to him?

Mr. MEYERS. It has been, I would say, approximately 5 or 6 months.

Senator SPECTER. Is there anything else that you would like to provide to the subcommittee?

Mr. MEYERS. Yes. I think there is one essential fact which has not been brought out which Judge Hupp told me and which I know, that on the day that Judge Hupp was followed, he has signed out and taken proper administrative leave. He had signed out for annual leave and, therefore, on the day that he was followed, had anyone checked—and this was verified by the court clerk—he was on lawful administrative leave.

Senator SPECTER. Anything further you would like to add, Mr. Meyers?

Mr. MEYERS. Well, Your Honor, there is—if I may have about 2 more minutes to echo what you have been saying.

Senator SPECTER. Take whatever time you need.

Mr. MEYERS. OK.

This matter has never seen the light of day in any administrative or judicial proceeding. I attempted to raise this with Judge Lyons, who I personally believe was handpicked to sit on this case.

Senator SPECTER. Why do you say that?

Mr. MEYERS. Judge Lyons, I have known Judge Lyons for many years. Judge Lyons considers himself to be an expert in Irish affairs. He has sat on one other IRA case.

Senator SPECTER. He did not pick himself. Why do you say he was handpicked for the case?

Mr. MEYERS. He did not pick himself, but I firmly believe that the—there are 10 Immigration judges in New York. Nine, they could have picked other than Judge Lyons.

Senator SPECTER. Who picked him if you know?

Mr. MEYERS. I never had a satisfactory answer to that question.

Senator SPECTER. Why do you think he was especially selected?

Mr. MEYERS. Because he has handled one other case in the past. He is known, at least by reputation, and I certainly believe it, to favor the Government's position.

Senator SPECTER. But you have no hard evidence that he was especially selected?

Mr. MEYERS. Other than trying to question Judge Lyons on the record, and this is part of the administrative record, no, it is a guess. We attempted in that hearing—

Senator SPECTER. You attempted in that hearing to bring out the facts?

Mr. MEYERS. Correct. And to bring out the facts concerning Judge Hupp.

Senator SPECTER. All right.

What were the next procedural steps where you attempted to raise this?

Mr. MEYERS. All right. We attempted to raise this in two subsequent habeas corpus proceedings, one initiated in Philadelphia which was ultimately dismissed on jurisdictional grounds.

Senator SPECTER. What judge was that before?

Mr. MEYERS. That was before Judge Green.

Senator SPECTER. And you tried to bring that issue up and Judge Green would not hear evidence on it?

Mr. MEYERS. That is correct.

Senator SPECTER. And the second habeas corpus proceeding was before what judge?

Mr. MEYERS. Before Maurice Lasker in the Southern District of New York.

Senator SPECTER. You tried to raise that issue there?

Mr. MEYERS. Correct.

Senator SPECTER. And he would not hear it there?

Mr. MEYERS. Correct.

Senator SPECTER. And procedurally the case went where?

Mr. MEYERS. Procedurally the case at this time, these were collateral proceedings while the deportation proceedings went on.

Senator SPECTER. Where did you next try to raise this issue?

Mr. MEYERS. We tried to raise it in the deportation proceedings the minute it happened.

Senator SPECTER. Before whom?

Mr. MEYERS. Before Judge Lyons.

Senator SPECTER. All right.

And then after that it went——

Mr. MEYERS. And then after that it went collateral to the deportation proceedings. We were raising this by way of habeas corpus.

We also attempted to raise this in two——

Senator SPECTER. Where did the appeal go from Judge Lyons' ruling?

Mr. MEYERS. Once that case was finished, in other words, all the evidence was taken, the issue—the deportability had been determined, it went to the Board of Immigration Appeals.

Senator SPECTER. All right.

And did you try to raise it in the Board of Immigration Appeals?

Mr. MEYERS. I was not counsel at that time.

Senator SPECTER. Do you know whether or not an effort was made there?

Mr. MEYERS. Yes. Yes. And the Board of Immigration Appeals indicated that there was essentially no support for the allegation concerning Judge Hupp and that, in any event, they had de novo jurisdiction and they could correct any errors that might have resulted from Judge Hupp's removal.

Senator SPECTER. Can the Board of Immigration Appeals hear testimony?

Mr. MEYERS. No. They are an appellate court only.

Senator SPECTER. So they have the authority to make a de novo determination based on the record?

Mr. MEYERS. Only on the record, Senator Specter.

Senator SPECTER. Was there any effort made to ask the Board of Immigration Appeals to remand the case before a hearing?

Mr. MEYERS. Not at that time. But——

Senator SPECTER. At any time?

Mr. MEYERS. Yes. Subsequently, and I believe now pending before the Board of Immigration Appeals is in fact a request to reopen these proceedings to hear testimony on this matter now that some documents have been released under the Freedom of Information Act.

Senator SPECTER. What documents are those?

Mr. MEYERS. Those are certain memoranda. These are documents you yourself have obtained, letters that you have used. The majority of documents that have been identified have been refused to be produced based on confidential privilege, protecting an informer——

Senator SPECTER. Now you are testifying about the documents that have not been produced?

Mr. MEYERS. That is correct.

Senator SPECTER. What has been produced?

Mr. MEYERS. Well, if I might have a moment, I could tell you with some precision.

Senator SPECTER. Let us come back to that after we hear from Mrs. O'Rourke, if we may.

Mr. MEYERS. Fine.

Senator SPECTER. And of course there was no evidentiary hearing before the Court of Appeals for the Second Circuit because that court does not hear evidence.

Mr. MEYERS. That is correct.

Essentially, Senator Specter, you are correct in stating that the court of appeals dismissed this allegation because there was no record before them upon which they could act, none.

Senator SPECTER. Anything further, Mr. Meyers, you would like to bring before the subcommittee?

Mr. MEYERS. Well, I have a set of documents that have been produced. They consist of—perhaps it would be appropriate to have them reproduced. They consist of a number of teletypes between the New York field office of the FBI routed to the Philadelphia office and to the Washington office, concerning Mr. O'Rourke's legal proceedings. There has been an allegation—

Senator SPECTER. They will be made a part of the record.

Mr. MEYERS. There has also, Senator, been an allegation which I was unaware of that the attorney-client privilege was actually penetrated by an agency of the Government during the early stages of Mr. O'Rourke's hearing. Whether it was the FBI, INS, ATF, the organization is not identified.

Senator SPECTER. What is the essence of that allegation?

Mr. MEYERS. The essence of that allegation is that there are teletypes between one agency and another concerning what Mr. O'Rourke's legal strategy was going to be, which information was not certainly known and was not in the public domain and had not been told to any INS agents or prosecutors by myself or any other person associated with Mr. O'Rourke.

Senator SPECTER. What is your evidence on that?

Mr. MEYERS. There is here a teletype which I am trying to find. I am paraphrasing now.

Senator SPECTER. Have you advised any of my staff of this at any time in the past?

Mr. MEYERS. I do not believe I have. I have just been made privy to this information since it was recently released under the Freedom of Information Act as a result of litigation instituted in the Southern District of New York against the Immigration and Naturalization Service. I am even unaware of these things.

Senator SPECTER. What does it amount to, Mr. Meyers?

Mr. MEYERS. In sum and substance, it is a report that summarizes the legal defense or defensive positions that we were going to take with Mr. O'Rourke's case long before they were ever taken. And it would tend to indicate that someone had some ability to be privy to conversations which were held between myself and Mr. O'Rourke, or other attorneys, myself, and Mr. O'Rourke.

Senator SPECTER. Anything further?

Mr. MEYERS. Not unless you have any questions.

Senator SPECTER. Mrs. O'Rourke, we would be pleased to hear from you at this time.

STATEMENT OF MARGIE O'ROURKE

Mrs. O'ROURKE. Thank you, Senator Specter.

Well, Michael is from Dublin and a little bit of his background, he is 32 years old. He came from a place called Broughan. The Ward and I have been there on several occasions visiting just to hear of his family and his neighbors talking about Michael. He is well respected in his community. Michael is well educated. He is a born leader. He is a design engineer.

In the early 1970's, Michael became aware of the situation in Northern Ireland and basically he just saw the social injustices and employment discriminations of the Irish in Northern Ireland and he realized this and witnessed the oppression; he became involved in the Irish Republican Army. But his involvement in the Irish Republican Army was not for Michael's sole benefit. It was for his country. Michael is definitely against violence. He some day would love to see an Ireland free from British rule.

As far as his character is concerned, when Michael—right after Michael was arrested, and I cannot remember the exact time, Mr. Meyers was the attorney at the time, we had about 24 hours notice to have people come down to Mr. Meyers to give an affidavit as to Michael's character. Approximately 80 people arrived at that office and I think that is saying something when 80 people can come down and attest to your character, all very good affidavits.

As far as his life in the MCC is concerned, just the other day I had an immigration officer tell me that he has been a model prisoner up there.

He has two commendation letters, one from a guard at the MCC. The guard apparently pored hot water over his leg and Michael took care of it right away. And on another instance there was an inmate at the MCC who was locked in his cell and set fire to his mattress. Michael quickly went to the scene. Somehow he broke a section of the door so that they could get a fire extinguisher in there. In the meantime, another guard went downstairs and got a key and finally forced their way into the cell, and Michael was the one who gave this other inmate mouth to mouth resuscitation. He is a very honest, very sincere, very dedicated man. All he ever wanted to do was just see a better world.

Michael never violated any of our U.S. criminal laws.

What scares me, other than the fact of all of this, involving the circumstances surrounding Judge Hupp is that for the almost 5 years that Michael has been in the metropolitan correctional center, I have been fighting extremely hard to see that he be allowed to stay in the United States with me so that we can live a normal, happy life. But we were always up against one very, very bad thing, and that was Immigration sending false information to Congressmen, Senators, and any other person who would ask them why they were—why they arrested Michael O'Rourke, why were they holding Michael O'Rourke? False information such that Michael entered the country through the Canadian border.

One very bad serious error that was made was sent to a man by the name of James Delaney and it was from Richard Sharkey from the Immigration Service in Philadelphia. James Delaney merely wanted to know why Michael was being held without bail. The response that Mr. Delaney got was when Michael escaped from prison in Ireland, he killed a prison guard. This is totally untrue. When Michael escaped, no one was ever killed in Ireland.

The next day, that letter—that statement was retracted. He overstayed his visa.

I think it is just—whatever happens to myself and Michael, for the sake of other Americans, I think it is just very, very important that we all get to the bottom of whatever happened to Judge Hupp. We do not know how many times it happened in the past. And if it is not corrected here, whether Michael and I are in Philadelphia or whether we are in Dublin, it might happen to other people. And I do not want to see other people suffer the way we have.

Thank you.

Senator SPECTER. Thank you, Mrs. O'Rourke. You have made a request to have Mr. Joseph—you had a request to have somebody else testify briefly?

Mrs. O'ROURKE. Yes.

Senator SPECTER. Let us have the gentleman step forward now and we will hear from him very briefly.

Would you state your full name, please, for the record.

STATEMENT OF JOSEPH A. ROCHE

Mr. ROCHE. My name is Joseph Roche. I live in Baldwin, MD, and I am the national president of the Ancient Order of Hibernians.

Senator SPECTER. What would you like to tell this subcommittee, Mr. Roche?

Mr. ROCHE. I would like to tell the subcommittee of my organization's involvement with the *O'Rourke* case.

An appeal was made by Margie through the local chapter in Philadelphia of the Ancient Order of Hibernians. They then brought this appeal to our National Convention in San Antonio, TX. A resolution was adopted, passed unanimously, that the Ancient Order of Hibernians would take this case, and work within the system, and hopefully bring some relief to Margie and Michael.

What we did was, we tried unofficially and officially, you might say, by going to one of the parties, that being the Irish Government. What I did personally was, on three occasions I approached the Irish Government and asked them why, why in fact they were hell bent on bringing Michael O'Rourke back. What was their motivation?

They were clear on the case, they knew how long he had been incarcerated, and no one gave me a good answer, until once I spoke with the Prime Minister—

Senator SPECTER. Mr. Roche, does this bear directly or indirectly on what happened to Judge Hupp in this case?

Mr. ROCHE. No, Senator.

Senator SPECTER. Well, we will hear you, but if you would make it as brief as possible, we would appreciate it.

Mr. ROCHE. OK. The point I am trying to make here is, who is motivated to have O'Rourke return, and I asked the Prime Minister of Ireland, Charles Haughey, why they were so intent, and this was in October 1982, why they were so intent on having him returned.

He told me that he and the Irish Government were not interested in having O'Rourke returned.

Senator SPECTER. Anything further you would like to say?

Mr. ROCHE. No.

Senator SPECTER. Thank you.

Mrs. O'Rourke, for the record, you are Mrs. Michael O'Rourke?

Mrs. O'ROURKE. Yes, sir.

Senator SPECTER. The wife of Michael O'Rourke?

Mrs. O'ROURKE. Yes.

Senator SPECTER. Professor Rice, we very much appreciate your being here, and look forward to your testimony.

STATEMENT OF CHARLES E. RICE

Mr. RICE. Thank you, Senator.

My name is Charles E. Rice, I am a professor of law at the University of Notre Dame Law School, and I have no firsthand information on this case, Senator, so I will be brief.

The first thing I want to do is thank the subcommittee for providing us with the opportunity for an evidentiary hearing on this case. It is the first time that it has been provided.

I should indicate very briefly how I came to be interested in the case, and then I would just like to make one point with respect to the Hupp matter, and terminate.

I was asked about the case by a friend of mine in Philadelphia, Joseph Wall, who is a friend of Mrs. O'Rourke's family, to look at the case. He sent me the papers on the case. When I read what was in there, I was incredulous: I could not believe it, that you had a sitting judge who recused himself from a case, and actually put on the record that he was doing so because he was, in his language—unjustly harassed and intimidated by the prosecution "because of presiding in this case."

With respect to the complaint that he was leaving work early, he put in the record, "I sincerely believe the complaint was filed because I have been involved in the *O'Rourke* case."

I cannot find, I have never heard, of any case that remotely compares with this, that has ever involved this situation.

Senator SPECTER. How long have you been a professor of law, Professor Rice?

Mr. RICE. I have been at Notre Dame since 1969, and at New York University and Fordham University since 1960, and I have been practicing law in New York for 3 years before that.

Senator SPECTER. So you have been a lawyer for about 27 years?

Mr. RICE. Since 1957, that is right.

Senator SPECTER. You say you never heard about a case like this?

Mr. RICE. I never heard of a case where a judge took himself off the case and said that he was physically terrorized and was intimidated off the case by the prosecution because of his involvement in the case.

Senator SPECTER. Have you ever heard of a judge being followed because he left work early?

Mr. RICE. No, sir. But the most aggravating factor was that there was no hearing that was provided to the defendant in the case. The successor judge denied that hearing. So frankly I got excited and indignant about it. I had no connection with the case—

Senator SPECTER. How did you happen to hear about the case? I know you have written to the Department of Justice, many letters, going back a lot of years.

Mr. RICE. Yes, sir. I heard about it, as I mentioned, from Mr. Wall in Philadelphia, who is simply a friend of mine, and a mutual friend of the Lieb family, Mrs. O'Rourke's family. He sent me some material on the case and said, do you think there is anything that can be done on the case.

I wrote a letter to Senator Thurmond, and recounted what I knew of the record, and asked for an investigation because, I said, "the American people are entitled to know, through a congressional investigation, what actually went on in the case." And I wrote to the White House, and I wrote to Judge Clarke.

Senator SPECTER. What response did you get from Judge Clarke?

Mr. RICE. Judge Clarke referred the case to the Justice Department.

Senator SPECTER. Did you get a response from the Justice Department?

Mr. RICE. No, sir, I did not expect one. All I was concerned about was that there be an inquiry and investigation into the case. I do not recall that I ever received a response from the Justice Department.

I emphasize, of course, that this aspect of the case has nothing whatever to do with the Irish issues in which Mr. O'Rourke is involved. In fact, it has nothing to do with the merits of the deportation case. The issue is the integrity of the administrative and legal process, and I emphasize beyond that, that that process can be disrupted through ineptitude, carelessness, disorganization, as readily as it can be disrupted by willful conduct, and I do not, and have not, and I want to make it clear, that I do not at all charge that this activity involved in Judge Hupp's following was the result of criminal or willful conduct. The main point I want to make is whether Judge Hupp's impression is correct, or whether the INS position is correct that the episode was a coincidence, the fact is that the disadvantage to Mr. O'Rourke was equally as oppressive.

As far as the disadvantage is concerned, I regret greatly that Judge Hupp is not here. We cannot verify for sure how he would have ruled on the case, but I think it is fair to say, Senator, that at least it is clear that he had not made up his mind to rule against Mr. O'Rourke. And there are indications that he would have ruled in his favor.

I think it is a fair surmise, it has to be a surmise, in the absence of Judge Hupp's testimony, but it is a fair surmise, that had this activity not taken place, the following and intimidation of Judge Hupp, whether innocent or not, that Michael O'Rourke would have been free these past 3 years.

The point that I want to make here is, since I have no firsthand knowledge of the case, the point I would suggest to the subcommittee is simply that regardless of what the subcommittee finds with respect to whether this was motivated by willful or criminal conduct, or whether it was an innocent mistake, and I do not charge one way or another, regardless of what they find, I think in the interest of fairness and justice that the charges against Michael

O'Rourke be dropped, and that the Government allow him to stay in the country. I think it is only fair that that be done.

Senator SPECTER. Professor Rice, why do you fashion, or structure that as the remedy?

Mr. RICE. Well, Senator, I think there are two factors here. One is that, whether this was a consequence of willfulness, or accident, or whatever, there should be an emphatic signal given to administrative agencies that you cannot run procedures like that, and you cannot even take the chance of depriving somebody of his liberty, or of his ability to stay in the United States, or both, as a result of such procedures.

And I think that even though we do not know how Judge Hupp would have ruled, it certainly seems clear, at least, that he had not made up his mind to rule against Michael O'Rourke.

Senator SPECTER. Have you seen any precedent for that kind of a remedy for this kind of a situation?

Mr. RICE. In the petition for certiorari to the Supreme Court, the counsel for Mr. O'Rourke has cited numerous cases in which immunity to deportation was granted and deportation proceedings were dropped. Immunity was granted because of government misconduct. None was precisely on point with this case.

Senator SPECTER. What kind of Government misconduct is there a precedent for on dropping deportation proceedings?

Mr. RICE. Well, for example, cases where there have been the oppressive violations of the protection against unlawful searches and seizures and so forth. I can provide you with those cases if you wish.

Senator SPECTER. So the consequence is the same as the criminal proceeding on suppressing evidence and dismissing the charge? The same kind of a remedy in a deportation proceeding?

Mr. RICE. Well, there have been cases—there are precedents where the deportation proceedings have been dropped because of Government misconduct.

Senator SPECTER. Because in this case the Board of Immigration Appeals—had Judge Hupp ruled in Mr. O'Rourke's favor, *de novo*, could have made a finding to the contrary?

Mr. RICE. That is correct. And this is something where we are really operating in a—really uncertain area. We do not know with absolute certainty how Judge Hupp would have ruled. We do not know what would have happened if it had gone to the BIA.

Senator SPECTER. But, at best, it could have been a ruling in Mr. O'Rourke's favor which the Board could have reversed?

Mr. RICE. Right.

Senator SPECTER. Would a remedy be to remand it to that stage, where the Board reconsiders on that phase of the record?

Mr. RICE. Possibly, I suppose. I am not an Immigration attorney. I have inquired about that aspect of the case with various Immigration attorneys. I have been told that it is most unlikely that a decision of the administrative law judge, such as Judge Hupp, would be reversed on a discretionary ruling like that.

So, as a practical matter, I cannot say so technically, but as a practical matter, if Hupp had ruled for O'Rourke, that probably would have been it.

Senator SPECTER. And what is your thinking on the case as it relates to the underlying charges or facts about Mr. O'Rourke's background?

Mr. RICE. I think the factor here is that it is most important to preserve the integrity, the procedural integrity of the process, whether we regard a defendant as desirable or undesirable or whatever.

In fact, it is more urgent than ever in a case where we have a defendant, and I am using the term defendant broadly, where we have a defendant whom we regard as undesirable, it is more urgent than ever to preserve not only the reality but also the appearance of procedural fairness. And in this case what happened is certainly destructive not only of the appearance of procedural fairness, but, I submit, of the reality as well. And it makes no difference who he is. I would not care if it were Attila the Hun who was involved in the proceeding. It makes no difference.

But there has been a disadvantage to him through the action of the Government. It was clearly the fault of the Government that Judge Hupp recused himself, and it was certainly not Michael O'Rourke's fault.

It seems that where the only bases for his deportation are the overstay and the address charge, that that certainly does not warrant a 5-year jail sentence coupled with deportation. I think the man has suffered enough. Enough is enough, and I think the proper course would be either to enact the Borski private bill, or simply to urge the administrative authorities, the executive branch, to drop the deportation proceedings.

Senator SPECTER. Well, this subcommittee does not have the authority to make a final resolution of the issue.

Mr. RICE. That is right.

Senator SPECTER. This subcommittee has the authority to make an inquiry on the integrity of the judicial process which, as you have noted from my statement, I consider to be the highest importance and the fundamental question that we have here.

Mr. RICE. Right.

Senator SPECTER. Is Congressman Borski here? Somebody from Congressman Borski's staff here?

Mr. CHAMOW. Yes.

Senator SPECTER. What is your name, sir?

Mr. CHAMOW. Ethan Chamow, legislative assistant.

Senator SPECTER. We received word a little after 10 that Congressman Borski could not be here, and we sent for him about 10:20 asking him to come by at 10:30, but we would be willing to hear from Congressman Borski if he is available.

Mr. CHAMOW. I was unaware, sir, until Ms. Westmoreland called and said that he could testify.

Senator SPECTER. Ms. Westmoreland called you and said he was available or could testify. Is he available?

Mr. CHAMOW. I can try to find out.

Senator SPECTER. Would you, please, if he would like to testify?

All right. Thank you very much.

Mr. RICE. Senator, if I may, I would like to offer for the record the portion of the petition for the writ of certorari to the Supreme

Court which has those citations that I mentioned. If you would like that.

Senator SPECTER. All right. Thank you, Professor Rice, we will make that a part of the record.

[Material submitted for the record follows:]

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1983

MICHAEL O'ROURKE, *Petitioner*,

v.

IMMIGRATION AND NATURALIZATION SERVICE, *Respondent*.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

Peter A. Schey, Margaret L. Popkin, Carlos Holguin, National Center for Immigrants Rights, Inc., 256 S. Occidental Boulevard, Los Angeles, California 90057, Telephone: (213) 388-8693, *Counsel of Petitioner*

The Court and the parties plainly viewed the case as nearly completed.⁶ The parties were to take the deposition of a State Department witness, mail the transcript to Judge Hupp, and the case would be closed. R 1069.

R 1056.

The scenario presented at the conclusion of the May 20, 1981, hearing was greatly altered by unanticipated intervening events. On May 22, 1981, two days after the last O'Rourke hearing, Immigration Judge Ernest Hupp was followed home for more than 120 miles by an unmarked black car with two male passengers in civilian clothing. Judge Hupp, believing IRS sympathizers were following him and that he was in grave danger, eventually pulled into a police station and sought protection. R 310-11. The black car then took evasive action and escaped. The FBI along with other law enforcement agencies were called in to investigate the matter. Convinced that he was a potential target of the IRA, and concerned for his life, Judge Hupp wrote a memorandum to the INS Chief Immigration Judge, dated May 29, 1981, stating that he was recusing himself from the proceedings:

"I have in my opinion been unjustly intimidated and harassed and believe the harassment evolves from my presiding in this case."

Exhibit 40, R 1905.

While Judge Hupp advised both the Chief Immigration Judge and the Central Office of INS of the incident, no one informed him that it was, in fact, INS agents who followed him until the morning of June 5, 1981, the date he had scheduled to formally enter an order recusing himself in the O'Rourke case. R 176. In an Order of Recusment, dated June 5, 1981, Judge Hupp explained the basis for his recusal:

"I am of the opinion that I must at this juncture recuse myself because I have been unjustly harassed and intimidated because of my presiding in this case."

On Friday afternoon, May 22, 1981, I was followed . . . for about 125 miles, before I finally drove into the Millersville, Maryland, police department seeking protection. I then believed that perhaps sympathizers of the IRA movement were trailing me.

[Today] two men from the United States Immigration and Naturalization Service . . . advised [me] that they had followed me on Friday, May 22, 1981, because of an

⁶ Judge Hupp indicated that he felt no additional evidence was needed regarding O'Rourke's activities and convictions in Ireland: I have now heard enough of what happened in Ireland, I am [now] interested in what happened in the United States.

anonymous complaint (unfounded of course) they had received about the possibility that I have been leaving Philadelphia Immigration Court on Fridays earlier than 4:30 p.m. without charging proper leave. . .

R 310-11 (emphasis added).⁷

On June 29, 1981, the proceedings were reconvened before Immigration Judge Francis J. Lyons who announced, "I am taking jurisdiction." R 789. Immigration Judge Lyons blocked any inquiry into the Judge Hupp incident, stating "*this has absolutely nothing to do with this case.*" R 794 (emphasis added). Nowhere does the record reflect on what facts Judge Lyons reached this conclusion.⁸ Over counsel's objection, Judge Lyons resumed and concluded the proceedings. Rather than picking up where Judge Hupp had left off, with no further testimony to be taken other than a deposition, Judge Lyons allowed the presentation of additional witnesses.⁹

On July 12, 1982, Judge Lyons issued his decision denying O'Rourke's various applications for relief from deportation. The Immigration Judge apparently believed that petitioner had engaged in common, non-political offenses. R 10. Petitioner appealed this decision to the Board of Immigration Appeals, which issued a decision dismissing his appeal on May 24, 1983.¹⁰ The Board denied the applications for adjustment of status, political asylum, withholding of deportation based on fear of political persecution, and for voluntary departure in lieu of formal deportation. The Board held, *inter alia*, that Petitioner's admission would be detrimental to U.S. relations with the Republic of Ireland and Great Britain. R 5 and 7. An appeal was taken to the Second Circuit Court of Appeals pursuant to 8 U.S.C. § 1105a. The Court of Appeals dismissed the appeal by opinion dated February 21, 1984. See Appendix.

Mr. MYERS. Your Honor, we have a continuing objection to your refusing to judge the credibility and demeanor of witnesses and only trying to judge it based on reading the record . . .

The COURT. I don't need repetition of all of the testimony before Judge Hupp. R 769.

2. The Decision Below Raises Significant and Recurring Problems Concerning Resolution of Prejudicial Government Misconduct in Deportation Proceedings

The original Immigration Judge in this case, Ernest Hupp, after concluding the proceedings, except for a deposition to be taken outside of his presence, recused himself on the ground that the government had "intimidated" and "harassed" him. R 310-11, 1905. Judge Hupp stated that he "sincerely believed" that this intimidation occurred "because I have been involved in the O'Rourke case." R 311.

Petitioner's attempted inquiry into these events was blocked by the new Immigration Judge assigned to the case. In fact, "efforts by Petitioner's counsel to investigate the allegations of Judge Hupp have been thwarted by INS [which] has built a wall of silence around the matter. . ." R 149. *Judge Hupp himself was ordered "not to discuss the matter on pain of administrative action."* *Id.* (emphasis added).

The Board of Immigration Appeals, ignoring the possibility that government misconduct might have occurred, concluded only that this issue was no "longer rele-

⁷ As a result of this incident Judge Hupp required "medical care". R 178. In a newspaper article dated June 21, 1981, Judge Hupp's wife is quoted as "speaking for her husband" and states that "the government action [of intimidating the Judge] was prompted by overzealous immigration officials who suspected that the Judge was prepared to rule in O'Rourke's favor." R 150 (emphasis added). Judge Hupp reportedly told his wife "they just wanted to scare me to get me off the case." *Id.* Judge Hupp has been prohibited from speaking about the incident.

⁸ While petitioner was denied the opportunity to explore these matters in a *de novo* fashion during his deportation proceeding, the government subsequently and unilaterally submitted declarations directly to the Board of Immigration Appeals declaring innocence. R 177-179. The agents actually involved in the incident are never identified. INS claims that Judge Hupp was followed home for 125 miles by INS agents because of an "anonymous" complaint that he was leaving work early. R 165. This anonymous complaint was allegedly received "on February 11, 1979," more than two years before he was followed home. *Id.* An "investigator" was not "assigned" to investigate Judge Hupp until February 1981, after petitioner's deportation proceedings were initiated. R 175. He was not followed home until two days after the O'Rourke hearing had ended.

⁹ However, when Petitioner's counsel sought to elicit additional testimony from Petitioner regarding his reasons for engaging in the activities which led to his Irish criminal convictions, Judge Lyons stated, "I don't need to hear what has already been heard by Mr. Hupp."

¹⁰ The Board—misstating the facts—found that "[O'Rourke's] indiscriminate terrorist use of explosives is atrocious in nature and out of proportion to the political goal of ending British domination over Northern Ireland." The Board also found that Petitioner's contention that "[Judge Hupp] would have ruled differently, but was intimidated into withdrawing, is neither supported by the record nor any longer relevant. . ." R 8.

vant, because of our independent review of the evidence of appeal." *Id.* at 7. The Court of Appeals found the issue to be so lacking in substance as to "merit no discussion." Appendix.¹¹

Petitioner had a due process right to a fair deportation hearing, free of prejudicial government misconduct. *Yamataya v. Fisher*, 189 U.S. 86 (1903); *Ng Fung Ho v. White*, 259 U.S. 276 (1922); *Bridges v. Wixon*, 362 U.S. 135 (1945); *Sung v. McGrath*, 339 U.S. 33 (1950); *Accardi v. Shaughnessy*, 347 U.S. 260 (1954). This right is beyond doubt. The deportation hearing must conform to traditional standards of fairness.

Petitioner timely sought and continues to seek the opportunity to obtain and present evidence (including perhaps administrative discovery pursuant to 8 C.F.R. § 287.4), and to cross-examine the government's affiants, R 175-182, regarding the Judge Hupp incident.

Since respondent so avidly relied upon *ex parte* government declarations to establish the absence of government misconduct during Petitioner's deportation hearing, Petitioner is clearly entitled to the right to cross-examine the affiants and present counter-evidence.

8 U.S.C. 1252(b) provides that the "alien shall have a reasonable opportunity" to examine the evidence against him, and present evidence on his own behalf. On the right to cross-examination in deportation hearings, see *Baliza v. INS*, 696 F.2d 1243 (9th Cir. 1982); *Maltez v. Nagle*, 27 F.2d 835 (9th Cir. 1982); *Hays v. Hatges*, 94 F.2d 67 (8th Cir. 1981); *Navarette v. Landon*, 223 F.2d 234 (9th Cir. 1955); *United States v. Brough*, 15 F.2d 377 (2d Cir. 1956), *cert. denied*, 351 U.S. 911 (1956); *Sardo v. McGrath*, 196 F.2d 20 (D.C. Cir. 1952).

In this case the affiants (whose declarations were not added to the record until after the deportation hearing) and those involved in the Judge Hupp incident were available as witnesses. Respondent argued in the Court of Appeals that Judge Lyons, who replaced Judge Hupp, was "well within his discretion" in denying Petitioner's request for an evidentiary hearing on the circumstances surrounding Judge Hupp's recusal. We respectfully suggest that Judge Lyon's discretion was circumscribed by the due process clause of the Fifth Amendment which guarantees a fair deportation hearing.

The Board of Immigration Appeals and the federal courts have repeatedly reversed deportation orders where serious government misconduct is shown. *U.S. ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267 (1954); *Benitez-Mendez v. INS*, 707 F.2d 1107 (9th Cir. 1983); *Lopez-Mendoza v. INS*, 705 F.2d 1059 (9th Cir. 1973); *Navia-Duran v. INS*, 568 F.2d 803 (1st Cir. 1977); *Cheung v. INS*, 418 F.2d 460 (D.C. Cir. 1969); *Matter of Garcia-Flores*, Interim Decision No. 2780 (BIA 1980).

Deportation "visits a great hardship on the individual . . ." *Bridges v. Wixon*, 362 U.S. 135, 136 (1945). Mr. Justice Brandeis noted that deportation often involves the loss of "all that makes life worth living . . ." *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922). Where potential government misconduct takes place—and particularly where the Immigration Judge himself withdraws from the case based on his allegation of government "harassment" and "intimidation"—the respondent in a deportation hearing should, at least, be entitled to an evidentiary hearing on the issue. Such a hearing was denied in this case. The INS ordered Judge Hupp not to speak out about his recusal upon pain of "administrative action."

The due process clause must require a remand for further proceedings and the formulation of a remedy by the Immigration Court in the event that prejudicial government misconduct is established.

Senator SPECTER. Thank you very much, Mrs. O'Rourke, Mr. Meyers, Professor Rice.

Might we have Mr. Connery and Mr. Leo return for a moment, please?

¹¹ Only because of a declaration filed by INS directly with the Board of Immigration Appeals after the record had closed—and thus never subject to cross-examination—we are informed by a government agent (we do not even know if he was one of the agents who actually followed Judge Hupp—his declaration says nothing about this) that "this investigation was entirely unconnected to the proceedings against Michael O'Rourke." R 175. The declaration states that neither the Assistant U.S. Attorney representing the government in Petitioner's deportation hearing nor the local INS District Director "had any knowledge of this Administrative Investigation until May 29, 1981," a few days after Judge Hupp was followed. R 175. The declaration does not state that other INS agents involved in the O'Rourke proceedings were also so uninformed. *Id.* This Court might well question whether an INS agent would conduct an investigation of an Immigration Judge in a local INS office without advising the INS District Director.

Mr. Greg Leo is in the corridor? I saw him step out of the room a moment ago.

[Pause.]

Mr. Leo and Mr. Connery, I wanted to give you a chance to reply, if there is anything you wanted to say, having heard the testimony of the intervening witnesses.

Mr. LEO. Again, Senator Specter, I would say that this is an innocent coincidence. It is a very unfortunate circumstance. It is one that the Service has learned a great deal from. I think many of the factors involved have been corrected since the time of the O'Rourke—I am sorry, of the Judge Hupp recusal. However, I think that the Government is firm that the process must work, the courts have heard the *O'Rourke* case and that the Immigration Service will follow through with the court's order, as ordered by the courts.

Senator SPECTER. You say, Mr. Leo, that you have made a modification of the procedures as they relate to what happened in this case?

Mr. LEO. I believe so, yes, Senator.

Senator SPECTER. What specific changes have been made?

Mr. LEO. Let me refer that to Mr. Connery.

Mr. CONNERY. I am unaware of what—the operations instruction which governs our office, a copy—Senator, the operations instruction which we are attempting to procure for you, which had the requirement to investigate immigration judges in it, was revised as a result of a series of conferences that were held to limit the amount of people we were required to investigate. Specific limitation was that we were no longer required under the new operations instructions signed by the current Commissioner of the Immigration Service, Alan Nelson, to investigate all supervisors, but are now only required to investigate serious supervisory misconduct on the part of GS-14 or 15 managers or higher, and even then there is an option to send it to the local region of the Immigration Service. There is no firm requirement as existed beforehand. That is the major change in the procedures that has been effectuated, Senator.

Senator SPECTER. So you are no longer required to investigate administrative law judges?

Mr. CONNERY. Well, Senator, in all fairness I must say that the administrative law judges are no longer part of the Immigration Service, so we would not be investigating them anyway. They now work over in main Justice. But this procedure was done to rectify the whole system.

Senator SPECTER. Was there any change, Mr. Leo has suggested that there was a change done in response to what happened in this case.

Are you suggesting that, Mr. Leo?

Mr. LEO. Let me clarify that. I think I misspoke. What I meant to say was that we have learned from this case, there have been significant changes since the time of the Hupp recusal. I do not want to link that as a cause and effect but I do think this situation gives us, you know, teaches us some things about the process and about how the process works. I think that we honestly look at the process relative to what we have learned because of this situation.

Senator SPECTER. Well, my question is: Have any changes been made specifically as a result of what the Immigration and Naturalization Service has learned from the recusal of Judge Hupp?

Mr. LEO. Let me ask my program manager.

Mr. CONNERY. Senator, as a result of investigations which we had to do on supervisors, immigration judges, even though they transcended over into main Justice, we would have preferred to have those matters handled elsewhere. We would have preferred not to be mandated to do the investigation.

That operations instruction was mainly geared to eliminate the requirement that out of every supervisor—in specific degrees of people—that we had to do an administrative investigation on them.

Senator SPECTER. Have you made some changes in your procedures as a result of what you learned from the recusal of Judge Hupp?

Mr. CONNERY. No, we have not.

Senator SPECTER. Mr. Leo, did you hear what Professor Rice had to say about appropriate remedy in this matter as he sees it?

Mr. LEO. Yes, I did, Senator.

Senator SPECTER. What do you think of that?

Mr. LEO. I would prefer not to comment on that because I have not had a chance to review that with the other members of the leadership of the Immigration Service.

I as an individual would not be empowered to make that decision nor would it be appropriate for me to comment on it.

Senator SPECTER. Mr. Leo, would we be able to hear from Mr. Lyle Karn on this matter?

Mr. LEO. I would be able to carry that request again to the Immigration Service and fully discuss it with the management of the Immigration and Naturalization Service and I would be able to give you an answer.

I would not today be able to commit that, Senator.

Senator SPECTER. It had been my expectation and Ms. Westmoreland had commented that you had expected him to be here today.

Mr. LEO. I would apologize for the miscommunication on that. I myself was unclear and I am sorry if I gave her the impression that he would be here today.

Senator SPECTER. Well, we had made the request last Thursday and the word came back to me that you expected him to be here really as your chief witness.

Mr. LEO. That was not my understanding, Senator. My understanding was that this hearing would be primarily focusing on the Judge Hupp matter. And for that reason Mr. Connery was our chief witness.

Senator SPECTER. But had it been your understanding that Mr. Karn was to be here because of his connection as District Director and what Judge Hupp had to say about this matter?

Mr. LEO. No, sir, it was not my understanding that we made the commitment that Mr. Karn would be here.

Senator SPECTER. Well, all right, if you would see if we could have his testimony, I would appreciate it. Your office is separate, as I understand it, from Mr. Michael E. Shahean, Jr.?

Mr. LEO. Yes, if I could describe for you organizationally how this works. The Immigration Service, the unit of the Justice De-

partment is separate. The Office of Professional Responsibility reports directly to the Commissioner of the Immigration Service. That would be Mr. Connery's office. Mr. Shahean has a separate office within the Department of Justice and he then would report to the management structure of the Department of Justice. I report directly to the Immigration Commissioner.

Senator SPECTER. Mr. Connery, have you been able to locate that regulation which you say requires the investigation of Judge Hupp?

Mr. CONNERY. I believe we should have a copy coming over within the next few minutes. I apologize for the delay.

Senator SPECTER. Within the next few minutes?

Mr. CONNERY. Well, that is what my man just tells me. It is an 8-year-old—

Senator SPECTER. All right. We have been joined by the distinguished Senator from Wyoming, Mr. Simpson, chairman of the Subcommittee on Immigration and Naturalization. We will be pleased to hear from Senator Simpson.

OPENING STATEMENT OF HON. ALAN K. SIMPSON, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator SIMPSON. Arlen, I thank you.

There is no one in this arena that I have come to know that is more tenacious, dogged, delightfully adept and intelligent than the person here chairing this proceeding today. He is persistent and he is very, very effective. He and I have talked a great deal about this issue, in some depth and honesty and with some candor. And my remarks will be very precise.

I appreciate your allowing me just to make a few comments. We are here to discuss whether there were irregularities in Mr. O'Rourke's deportation trial. And I knew that it would never stay right there. It cannot. And so I just want to remind the participants as to where I am coming from as chairman of the Subcommittee on Immigration and Refugee Policy on this issue.

It is very important when you are talking about deportation and immigration and things like that, the sanctity of our borders. And that debate is going on right now in the U.S. House of Representatives for the first time in 35 years, and I think that is very important.

But I think it is very important for purposes of trying to allay and bring into perspective the things that whirl around an issue like this, things like fear, guilt, emotion, racism, all of the stuff that trashes around in this area and, boy, do not think I have not been in it; what legislative gods visited upon me, immigration reform, agent orange, nuclear energy and everything else. and that is the kind of arena that I get to play in in this place.

But I think it is very important to review a very salient figure and a very salient point that Mr. O'Rourke has a criminal record and that cannot be wished away. I do not see that appearing always in some of the material that I read.

Many describe Mr. O'Rourke as a very unfortunate man whose only crime was marrying an American woman. I understand that

and I will be glad to visit with Mrs. O'Rourke. That his only crime was marrying an American woman and overstaying his visa is not true. This is most certainly not so.

The records of the Special Criminal Court of Dublin County, Ireland, that is the Republic of Ireland, not Northern Island, indicates that Michael O'Rourke was convicted of three felony counts of possession of explosives and firearms in violation of Ireland's Explosive Substances Act and Firearms Act, three felonies.

He was sentenced to 6 years on each of 2 counts and 2 years on the third count, all to be served concurrently.

I am always fascinated to hear of those who speak for law and order and justice just waving their wand over that as if it had not occurred.

Then Mr. O'Rourke escaped from custody by blasting his way out of a court holding area. That is what he did. He was adept enough at explosives that he blasted his way out. And then—and here is where I enter the fray—he entered these United States on a non-immigrant visitor's visa under the false identity of Patrick Manion. That is the name he used, in order to obtain that visa. He lied. That is how he got the visa. He lied about his true identity. He lied about his reasons for coming to the United States. He lied about his past criminal record which would have made him excludable from entry into the United States. No U.S. court anywhere has challenged those findings. And there have also been allegations that during O'Rourke's deportation hearings the sitting immigration Judge Ernest Hupp was intimidated by this Government. In fact, the Government investigators were examining allegations that the judge was improperly leaving his work early. And there is no evidence that they had any knowledge of Judge Hupp's involvement with the *O'Rourke* case, no matter how intimidated or fearful he might have been. They were wanting to find out if he actually did leave his office on Fridays or whatever.

I see some of you shaking your heads, but there is two sides, you see. So hang on about 3 more minutes. It is called, I think, justice or it is called letting everything hang out.

So just hang on about 3 more minutes and old Simpson will finish and wander back into his digs.

And so there is no evidence there that there was knowledge of Judge Hupp's involvement with the *O'Rourke* case. And when the Court of Appeals for the Second Circuit considered this allegation of intimidation, it concluded, and I quote:

"Petitioner's due process claims arising out of Judge Hupp's decision to recuse himself are so lacking in substance as to merit no discussion."

Mr. Chairman, I find that a rather conclusive statement, and the staff of the Immigration Subcommittee has extensively reviewed the facts of this case, they have interviewed the INS officials involved, Judge Hupp, Greg Leo; the head of the office of Professional Responsibility of INS, Mr. Connery, the agent who followed Mr. Hupp, Mr. Weiss. The staff concluded, and I share that conclusion, that the courts and the INS have behaved properly and that the order of deportation against Mr. O'Rourke is appropriate. And, in my opinion, the allegations of intimidation are unsupported by fact and do not constitute even probable cause, which is something that

we use in proceedings, to believe that the INS officials and agents involved acted improperly. And therefore I declined to hold a hearing before the Immigration Subcommittee on the O'Rourke deportation proceedings.

Let me say, Mr. Chairman, I have extreme compassion for Mr. O'Rourke's U.S. citizen wife who is here today, but I also have compassion for the victims of bombings and other terrorist acts in Ireland, those on both sides of this very troubled and tragic struggle which is known simply as "the troubles in Ireland."

I want to make clear to you, sir, that I understand your deep concern and the people that you represent, your constituents, and that is where this great movement springs from, the people that you represent. And that is how we all respond in this place, I certainly do. There is no Senator that takes a more active interest in criminal and judicial procedures than this gentleman; Senator Specter is the greatest Senate authority on judicial and criminal procedures in the U.S. Senate since he came to this committee.

However, I honestly feel in this case, I believe, there is no substantial evidence of impropriety and somewhere along the line you just have to say that is it. Every type of accommodation has been made, the chairman has made it, the subcommittee chairman has made it, somewhere along the line you just say that is it. We have done all we can to recognize what is there, but at least let us all deal with the same set of facts. And that is what I hope we will do. I appreciate your holding the hearing and I wanted to come and make those statements.

[Material submitted for the record follows:]

MEMORANDUM

PREPARED FOR SENATOR ALAN K. SIMPSON

by

STAFF OF SUBCOMMITTEE ON IMMIGRATION
AND REFUGEE POLICY OF THE COMMITTEE
ON THE JUDICIARY, U.S. SENATE

MICHAEL O'ROURKE CASE

In July 1975 Michael O'Rourke was convicted in the Republic of Ireland for illegal possession of firearms and explosives. The first conviction was for "possession of explosive substances under suspicious circumstances...and for unlawful and malicious possession of firearms to endanger life." The latter conviction was tied to O'Rourke's supervision of a bomb factory in the Republic of Ireland, which he ran under the cover name of Aqua Engineering.

O'Rourke's second conviction was again for illegal possession of firearms and explosives, at his father's residence; described as a veritable "treasure trove" of materials for assembling explosives.

O'Rourke claimed that he was jailed in Port Laoise Prison in the Republic of Ireland as a political prisoner. Actually the Republic of Ireland has "never accorded (convicted IRA members) anything like the 'special category status' that Northern Ireland has..."

On July 15, 1976 he escaped from prison by blowing open a door. O'Rourke then took up his former activities as part of a Provo "active service unit" (read group that carries out Provo bombings and shootings).

O'Rourke was arrested by the INS on charges of being a deportable alien because of illegal entry under 8 U.S.C. Sec. 125(a)(2). He entered the U.S. as a nonimmigrant visitor under an assumed name, Patrick Mannion. To obtain a visa for the U.S.

he lied about his identity and his purpose in coming to the USA. During the early stages of his deportation hearings, he refused to cooperate, and did not reveal his real identity. He also was deportable as an overstay.

At his deportation hearing in May, 1981, O'Rourke stated that he was "a full-fledged member of the P.I.R.A. (Provisional Irish Republican Army)...manufacturing bombs, mortars and rockets."

The District Director of the INS decided that O'Rourke should be held in custody pending final outcome of deportability proceedings.

O'Rourke then applied for bail to Immigration Judge Gordon, which was denied because INS claimed that O'Rourke was a member of P.I.R.A., that he was a terrorist, and that he had escaped from an Irish prison. O'Rourke then appealed to BIA, which remanded the case because INS assertions about O'Rourke hadn't been substantiated. At the remand hearing INS presented evidence showing that O'Rourke had been convicted in the Republic of Ireland for possessing explosives and been sentenced to two concurrent prison terms and that while in jail serving out his sentence, he and other fellow IRA members escaped from prison "by exploding a bomb in a court holding pen and that "he faces a possible sentence of life imprisonment from charges arising out of the escape." Citing the 5th Amendment, O'Rourke refused to answer any questions and his appeal for bail was again denied on the basis that "he presented a risk of flight."

On appeal, BIA affirmed the decision denying O'Rourke's bail. O'Rourke did not reveal his true identity until the June 1980 hearing at which he applied for adjustment of status on the basis of his marriage to a U.S. citizen, which he had previously kept secret.

The Immigration Judge, Francis Lyons, stated at the July 1982 proceedings that O'Rourke had to show that his deportation from the U.S. because of his past criminal record "would result in extreme hardship to his wife."

This O'Rourke did not do. "O'Rourke's marriage was not open, and there is no evidence that they ever lived together. His wife continued to live with her parents and he continued to occupy his own quarters." O'Rourke's wife knew that he was an escaped convict and fugitive from justice at her marriage.

In cases involving an alien who enters the U.S. as a visitor and overstays and applies for adjustment of status after marrying a U.S. citizen"...adjustment of status may often be granted, in the absence of other adverse factors." However, because O'Rourke was a fugitive from justice in Ireland, obtained a visa under a false name and entered the U.S. under a false name, and under false pretenses, continued to use a false identity until some time after arrest by the INS, did not seek asylum under his own name until it was convenient for him to do so, has no ties other than his wife in the U.S., he was precluded from being granted adjustment of status.

The Judge found that O'Rourke's convictions for crimes in Ireland were crimes involving moral turpitude under the Irish Government's Offenses Against the State Act. O'Rourke contended that he could not be held accountable for acts committed in Ireland because they were political crimes. The Judge concluded that the offenses for which O'Rourke was convicted in Ireland were "of a criminal nature" and were not "purely political" within the meaning of Section 212 (a) (9) or 212 (a) (10). The same crimes committed in the U.S. would be considered to be criminal even if carried out for political purposes.

O'Rourke applied for asylum or stay of deportation. He claimed he would be punished if returned to the Republic of Ireland and could receive life imprisonment for having escaped, and that this would constitute "persecution or a well-founded fear of persecution because of race, religion, nationality or membership in a particular social group or political opinion..."

Judge Lyons countered that "unless we reject the right of the Republic of Ireland to punish criminal activity within its

territory, the idea that such prosecution and enforcement is persecution must be rejected." He denied O'Rourke's appeal for asylum or interdiction of deportation.

O'Rourke's Petition to U.S. Court of Appeals for the Second Circuit was filed in Feb, 1984. BIA proceedings in May 1983 found that denial of adjustment of status or interdiction of deportation was properly denied, because the equity of O'Rourke's U.S. citizen spouse was far outweighed "by the extremely serious negative discretionary factors."

1. O'Rourke escaped from prison by using explosives, and fraudulently got a U.S. visa using an alias.
2. After his marriage to a U.S. citizen, he and his wife lived separately and she supported herself.
3. The Judge also found that the denial of asylum and interdiction of deportation were warranted.

The Judge also found that O'Rourke's contention that the Immigration Judge who initially conducted these proceedings would have entered a different ruling but was intimidated into withdrawing "...is neither supported by the record, nor any longer relevant because of our independent review of the evidence on appeal."

O'Rourke's Petition for review of Judge Lyons' 1983 decision denying him adjustment of status and his request for waiver of inadmissability, his request for asylum as a political refugee, his request for withholding deportation to Republic of Ireland and his request for voluntary departure were all denied.

The judge stated that O'Rourke's claim that he was denied due process because of Judge Hupp's decision to recuse himself was so meritless as to need no discussion.

The brief for the INS states that the BIA concluded that O'Rourke's admission would be detrimental to relations between the U.S. and Great Britain and the Republic of Ireland.

"At a minimum, application of the political offense exception requires that the offenses have been committed as part of a war,

rebellion, or insurrection against the prosecuting government." There is no war or rebellion in the Republic of Ireland, against whom O'Rourke committed his supposedly purely political acts.

O'Rourke's claim that he should have a de novo hearing because Judge Hupp recused himself is without merit, and was never actually presented to the Judge (Judge Hupp, that is). The U.S. Attorney for the Southern District of New York, Rudolph Giuliani, stated that the law "broadly provides for substitution if an immigration judge becomes unavailable to complete his duties within a reasonable time. The law also does not address itself to the issue that a deportation hearing must be commenced de novo, leaving that decision, instead, to the sound discretion of the immigration judge."

Judge Lyon rejected also O'Rourke's oral discovery request, because the discovery sought did not have anything to do with the issues in O'Rourke's deportation hearing.

"Thus discovery with respect to Judge Hupp would simply not have been pertinent to O'Rourke's own eligibility for adjustment of status, his claim of persecution in the Republic of Ireland, or the assertedly political character of his offenses in that country, which he apparently regards as the central issue case, nor could such discovery have altered his conceded deportability or have refuted the evidence supporting the denial of relief from deportation, all of which was in existence before he was even apprehended by INS."

The petition for review was denied for the above reasons.

Senator SPECTER. Thank you very much, Senator Simpson.

I appreciate the very careful thought that you have given to the matter and as you and I have discussed it, we have seen it from a somewhat different perspective. Earlier today Senator Hatch opened the hearing with a detailed statement as to Mr. O'Rourke's background and his conviction and the factors on that side, and we have not heard from Judge Hupp who has declined to come here today. But he has, through others, made some facts or allegations of record here today. Unfortunately, they are in a hearsay context to the extent that he believed that Mr. Lyle Karn was responsible for initiating the proceeding, and he felt that he had been intimidated. And these are matters which, as you know, I felt ought to be the subject of inquiry beyond Mrs. O'Rourke, who is a constituent of Pennsylvania, but on the issue of the integrity of the judicial process.

We had been awaiting Congressman Borski, but I do not believe he has arrived yet. What the future will hold, I do not know. There are a number of outstanding matters which I have commented about already. One matter has been bringing Judge Hupp to this subcommittee, if necessary by the subpoena route.

Second, to hear from Mr. Lyle Karn, and we discussed that with Mr. Leo.

And a third matter, to hear from Mr. Michael Shahean, who I had expected to be here today and had asked that he have his file here. But this is not an easy issue, and I think, in the last few minutes, Senator Simpson and I have brought into perspective some of the considerations which are on both of our minds, very fair and candid statements, and that perhaps is the beauty of the U.S. Government and the U.S. Senate.

Senator SIMPSON. Well, I tell you if I represented my constituents as doggedly and with the persistence that you do, there would be nothing left of me, and look at me already.

Senator SPECTER. Senator Simpson does such an outstanding job in representing his constituents that they cannot find anybody to run against him in Wyoming.

Senator SIMPSON. They did find a person. He said that he was not really running against me. He said he had taken up a single issue and the issue was that there should be no further reductions for home mortgage interest on the tax return. And I thought, boy, that is all right. That is his issue apparently.

Senator SPECTER. I will stand by to talk to Mr. Connery about his record and the outstanding matters which we have identified so the hearing is—I do not know quite which word to use, the hearing is suspended at this time so far as this presiding chairman is concerned.

Thank you all very much.

[Discussion off the record.]

Senator SPECTER. Congressman Borski is here, so we will take your testimony.

STATEMENT OF HON. ROBERT A. BORSKI, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. BORSKI. Senator Specter, I want to thank you for this opportunity to speak before this subcommittee on the important issues raised in the case of Michael O'Rourke.

I have prepared written testimony that I would like to submit for the record.

Senator SPECTER. Your full testimony will be made a part of the record, Congressman Borski.

[The prepared statement of Congressman Borski follows:]

PREPARED STATEMENT OF REPRESENTATIVE ROBERT A. BORSKI

Mr. Chairman, I want to thank you for this opportunity to speak before this subcommittee on the important issues raised in the case of Michael O'Rourke.

I first became interested in this case when I served in the Pennsylvania legislature and cosponsored legislation supporting Mr. O'Rourke. My interest in this case has continued since taking office as the Representative for the Third Congressional District in Pennsylvania. As a matter of fact, Mr. O'Rourke's wife, Margie Lieb O'Rourke, lives in my district. I would also like to point out that both the Philadelphia City Council and the Pennsylvania House of Representatives have passed resolutions in support of Mr. O'Rourke.

I have examined the case for well over a year. In early February of this year, I introduced a private immigration bill in the U.S. House of Representatives for the relief of Mr. O'Rourke, so that the House would have an opportunity to look into the case.

Senator Arlen Specter has looked into the important issues raised in this case, and has also introduced legislation for Mr. O'Rourke.

I have received numerous inquiries from colleagues indicating growing congressional interest in the withdrawal of a federal judge under what must be described, at the very least, as curious circumstances.

What is at stake is the integrity of our judicial process and the security which comes from knowing that our system is one of justice and not of men.

The case involves Michael O'Rourke, a 32 year old Irish citizen, whom the Immigration and Naturalization Service seeks to deport. He has been confined without bail in the maximum security facility of the Metropolitan Correctional Center in New York City since November 1979, and holds the record as the longest held prisoner on deportation charges without bail in the history of the Immigration and Naturalization Service.

In early February, I spoke to Judge Ernest H. Hupp, who was the original immigration judge hearing the case of Michael O'Rourke. He told me that at the time he withdrew from the case, he was inclined to rule in favor of Mr. O'Rourke and allow him to stay in this country because he had not committed any crimes in the United States, his offenses in Ireland were political in nature, and he is married to an American citizen. He also said that he supports the private immigration bill I have introduced for Mr. O'Rourke because he believes Mr. O'Rourke deserves relief.

On May 20, 1981, Judge Hupp indicated his position at a hearing by asking Mr. O'Rourke if he had a place to live in the United States, if he had employment possibilities, and if he knew that he could apply to become a U.S. citizen (once he had permanent residency) because he was married to an American citizen. Judge Hupp also informed the prosecution that he did not want to hear anything more about Michael O'Rourke's activities overseas or the violence of the IRA. That was strong indication that Judge Hupp was going to rule in Michael O'Rourke's favor.

In fact, during my conversation with Judge Hupp, he confirmed that he was inclined at that time to rule in favor of Mr. O'Rourke. Judge Hupp also told me that the case was nearly finished at the time he withdrew.

Two days later, on May 22, 1981, two men in a black sedan followed Judge Hupp from Philadelphia to Maryland, approximately

125 miles. Judge Hupp sought the assistance of Maryland Police and the FBI during the course of this incident. The black sedan managed to elude two Maryland plainclothes police detectives.

On May 26, 1981, Judge Hupp sent a lengthy memorandum reporting this incident to Doris Meissner, Acting Deputy Commissioner, INS Central Office. This memorandum indicated that copies had been sent to Joseph W. Monsanto, Chief Immigration Judge, Lyle L. Karn, Philadelphia INS District Director, and FBI Agent John A. Friel, Jr.

This memo was stamped received in the Philadelphia INS District Office on May 29, 1981. In this memo, Judge Hupp states "I became very scared for my life because I felt these men may mean harm for me and may be sympathizers of the IRA trying to intimidate me in making a decision on Michael O'Rourke (aka: Patrick Mannion)."

In his May 29, 1981 memorandum to Acting Chief Immigration Judge Joseph W. Monsanto, Miami District Office, which was stamped received by Judge Monsanto's office on June 4, 1981, Judge Hupp advised Judge Monsanto that he was withdrawing himself from the Michael O'Rourke case. Judge Hupp states that "this decision is based upon the fact that I have in my opinion been unjustly intimidated and harassed and believe the harassment evolves from my presiding in this case."

This is strong evidence that Judge Hupp tied the incident to the case, and even more important, felt that the incident caused him to withdraw from the case. In fact, during my conversation with Judge Hupp, he told me that he believes his involvement in the case was the reason he was followed.

Two whole weeks after the incident, on June 5, 1981, Judge Hupp entered his order of recusement. He formally withdrew from the case because, as he stated, "I have been unjustly harassed and intimidated because of presiding in this case." Judge Hupp explicitly states again that the harassment is due to his involvement in the case and that he feels the need to remove himself from the case because of the harassment.

Following a brief description of the events of the incident of May 22, 1981, Judge Hupp stated "I then believed that perhaps sympathizers of the IRA movement were trailing me."

Judge Hupp went on to describe a visit by two federal agents from the Office of Professional Responsibility in Baltimore, Maryland, that same day, two weeks following the incident. Judge Hupp writes, referring to one of the federal agents, "one advised that he had followed me on Friday, May 22, 1981, because of an anonymous complaint (unfounded of course) they had received about the possibility that I have been leaving Philadelphia Immigration Court on Fridays earlier than 4:30 p.m. without charging proper leave."

He writes the following paragraph: "However, I sincerely believe that the complaint was filed because I have been involved in the O'Rourke case. In November 1979 the District Director testified in the proceeding as to the probable cause he had when he signed the order to Show Cause in the said case, and when he stated that Investigator Britt told him the alien spoke with an Irish accent, laughter prevailed in the courtroom."

Last, Judge Hupp says he must make "his own conclusions as to why I am being harassed, be these conclusions proper or not. Therefore, I feel that I must recuse myself from the proceedings."

Following Judge Hupp's recusal, Immigration Judge Francis Lyons was appointed to replace him and began the case where Judge Hupp left off. The issue of Judge Hupp's recusal was not permitted to be discussed because Judge Lyons determined that it was irrelevant without hearing any testimony on the matter.

If we are to eliminate any doubts about justice in this case, it is very important that we are able to publicly answer the serious questions it raises.

If undercover federal agents intimidated Judge Hupp, then their actions are an abuse of power so shocking and fundamental that they contaminate the entire proceedings against Michael O'Rourke.

If a government agency acted wrongfully, the most emphatic possible signal must be given to administrative agencies that the people and the Congress will not tolerate the corruption of the administrative and judicial processes.

Thank you, Mr. Chairman.

Mr. BORSKI. Thank you very much.

I would like to give a brief description of the events and the serious issues that they raise.

I first became interested in this case when I served in the Pennsylvania Legislature and cosponsored legislation supporting Mr. O'Rourke. My interest in the case has continued since taking office as the Representative for the Third Congressional District of Pennsylvania.

As a matter of fact, Mr. O'Rourke's wife, Margie Lieb O'Rourke, lives in my district.

I would also like to point out to the subcommittee that both the Philadelphia City Council and the Pennsylvania House of Representatives have passed resolutions in support of Mr. O'Rourke.

I have examined this case for well over a year. In early February of this year, I introduced a private immigration bill in the U.S. House of Representatives for the relief of Mr. O'Rourke. I am hopeful that the House will now take the opportunity to look into the serious questions that this case raises, and I would like to commend Senator Arlen Specter, who has introduced similar legislation in the Senate.

I have received numerous inquiries from my colleagues in the House indicating growing congressional interest in the withdrawal of a Federal judge under what must be described, at the very least, as curious circumstances.

In early February, I personally spoke with Judge Ernest Hupp, the original Immigration judge in this case. He told me that at the time he withdrew from the case, he was inclined to rule in favor of Mr. O'Rourke and allow him to stay in this country.

Senator SPECTER. Congressman Borski, can you place the date of that conversation as nearly as possible?

Mr. BORSKI. February 9. It was 2 days after I introduced the legislation.

Senator SPECTER. February 9 of 1984?

Mr. BORSKI. 1984.

Senator SPECTER. And as nearly as you can recollect, what words did he use in the statement to you?

Mr. BORSKI. I talked to him about my introducing the private bill, and about his role in the case. He said to me, that up to that point in the case, he would have ruled in Mr. O'Rourke's favor.

Senator SPECTER. Was that conversation by telephone, or in person?

Mr. BORSKI. That was by telephone.

Senator SPECTER. And where were you at the time the call was placed?

Mr. BORSKI. I was in my Washington office.

Senator SPECTER. Did you place the call?

Mr. BORSKI. I did.

Senator SPECTER. And do you know where Judge Hupp was?

Mr. BORSKI. I placed the call to Judge Hupp's chambers, and the call was returned to my Washington office.

Senator SPECTER. And the caller identified himself as Judge Hupp?

Mr. BORSKI. That is correct.

Senator SPECTER. And as precisely as you can recollect, what did he say to you on the subject of what his disposition or conclusion of this case would have been?

Mr. BORSKI. He said to me, very clearly, up to that point in the proceeding that he would have ruled in Mr. O'Rourke's favor.

He further stated that he was very encouraged that I had introduced a private bill, and hoped that it would pass.

Senator SPECTER. Did he say he would have ruled in Mr. O'Rourke's favor, or that he was inclined?

Mr. BORSKI. He said that up to that point he would have ruled in Mr. O'Rourke's favor.

Senator SPECTER. Because I think you used the word, inclined, when you spoke a moment ago.

Mr. BORSKI. For clarification, my use of the word inclined indicates Judge Hupp's disposition up to that point in the proceedings. He had indicated that there conceivably could have been further testimony that may have changed his mind, but up to that point, that he was emphatically going to rule in Mr. O'Rourke's favor.

If I may repeat somewhat, Judge Hupp was inclined to rule in favor of Mr. O'Rourke, and allow him to stay in this country, because Mr. O'Rourke had not committed any crimes in the United States, his offenses in Ireland were political in nature, and he is married to an American citizen.

Judge Hupp also told me that the case was nearly finished at the time he withdrew. On May 20, 1981, Judge Hupp indicated his position at a hearing, by asking Mr. O'Rourke if he had a place to live in the United States, if he had employment possibilities, and if he knew that he could apply to become a U.S. citizen once he had permanent residency, because he was married to an American citizen.

I will not repeat the events in detail because I understand that this has been the basis for earlier testimony. Two days later Judge Hupp was then followed by the INS agents for over 125 miles.

Fearing for his life and the safety of his family, Judge Hupp withdrew from the case. He told me in our conversation that he had never been so scared in his life, as when he was followed on May 22, 1981.

After his withdrawal, he was informed that the men following him were undercover Federal agents. Judge Hupp further told me that he believes his involvement in the case was the reason he was followed.

If we are to eliminate any doubt about justice in this case, it is very important that we are able to publicly answer the serious questions that the Judge Hupp incident raises.

If undercover Federal agents intimidated Judge Hupp, then their actions are an abuse of power so shocking and fundamental that they contaminate the entire proceedings against Michael O'Rourke.

If a Federal agency acted wrongfully, the most emphatic possible signal must be given that the American people and the Congress will not tolerate the corruption of the administrative and judicial processes.

Senator SPECTER. Congressman Borski, suppose they did not act maliciously, with intent, but it was only a mistake, what would the remedy be, in your view?

Mr. BORSKI. I find it extremely hard to believe that anyone would follow someone for over 125 miles without direct intent.

Senator SPECTER. Well, suppose they followed him because they wanted to check on whether he was leaving work early, or do you dismiss that assertion as too ridiculous to consider?

Mr. BORSKI. I find that extremely hard to believe due to several circumstances, including that the agents did not notify Judge Hupp in a timely manner that that was what they were doing after he had notified his superiors that he had been followed.

Senator SPECTER. Is it your conclusion—what is your conclusion, then, as to what they did here?

Mr. BORSKI. It is my personal feeling, Senator, that due to the testimony given in court, Judge Hupp was about to rule in Mr. O'Rourke's favor, and that the INS then sent people out to intimidate Judge Hupp causing him to withdraw from the case. I think it would have been very easy for his withdrawal to have been stopped if Judge Hupp had been reassured immediately that the INS agents were following him for something else.

Senator SPECTER. You may proceed.

Mr. BORSKI. It is my understanding that the Supreme Court this morning ruled not to hear Mr. O'Rourke's case. Therefore, it becomes even more important to look into the Judge Hupp incident, if we are to be sure that justice is done.

Senator, I want to thank you for reconvening this hearing, and giving me the opportunity to appear here.

Senator SPECTER. All right.

Thank you very much for coming, Congressman Borski. We very much appreciate your being here.

The hearing is again suspended.

Thank you all.

[Whereupon, at 12:37 p.m., the subcommittee hearing was suspended.]

ISSUES RELATING TO THE DEPORTATION OF MICHAEL O'ROURKE

MONDAY, JULY 30, 1984

U.S. SENATE,
SUBCOMMITTEE ON THE CONSTITUTION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:08 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Orrin G. Hatch (chairman of the subcommittee) presiding.

Present: Senator Specter.

Staff present: Mary Louise Westmoreland, chief counsel, and Tracy McGee, chief clerk, Subcommittee on Juvenile Justice.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH, CHAIRMAN, SUBCOMMITTEE ON THE CONSTITUTION

Senator HATCH. Ladies and gentlemen, in response to the request from my distinguished colleague from Pennsylvania, Senator Specter, the Subcommittee on the Constitution will now conduct a second day of hearings on the subject of the deportation of Mr. Michael O'Rourke, a citizen of the Republic of Ireland; that is, Southern Ireland. Following two convictions in Southern Ireland for terrorist activity, Mr. O'Rourke escaped from incarceration through the use of explosives and entered the United States on a false passport.

Mr. O'Rourke was recently deported by the INS following the denial of certiorari in his case by the Supreme Court. Remaining questions, however, relating to the INS procedures in the O'Rourke deportation have prompted the present hearing.

Today's hearing is going to be chaired by Senator Specter and will focus upon the impropriety of these procedures.

We are grateful to those who are testifying here today, for the cooperation that they have given. I personally am grateful to members of the Immigration and Naturalization Service for the cooperation they have given to me and to Senator Specter.

I hope that we can put this matter to bed with this one final hearing.

I have conflicts myself, so Senator Specter will chair the hearing and I just want to express my regard and admiration for you, Senator Specter.

Senator SPECTER [presiding]. Thank you very much, Senator Hatch, and before you leave, let me express my appreciation as

well as esteem for you and your diligent work as chairman of this subcommittee on so many many matters, especially your willingness to take on this hearing which I consider to be very important, which I will comment on at some additional length after you depart.

But I know your very crowded schedule and I appreciate your undertaking the hearing and I shall chair it in your absence.

Senator HATCH. Thank you, Senator Specter. I am interested in the outcome of this hearing and will certainly chat with Senator Specter afterwards and try and read the transcript as well.

So, hopefully this will button down some of the issues that have been raised and some of the questions that you and I have.

**OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR
FROM THE STATE OF PENNSYLVANIA**

Senator SPECTER. The purpose of this hearing is to proceed to explore the circumstances relating to the recusal of Judge Hupp.

As I have outlined previously, in an earlier hearing, in a range of correspondence, it is my view that the central issue in this matter from the outset has been the procedure on the Immigration and Naturalization operation on the investigation, the following of Judge Hupp and on his recusal.

Whatever the underlying merits may be as to whatever Mr. Michael O'Rourke may or may not have done, the real issue of oversight by the Committee on the Judiciary, was the issue of due process of law and the way administrative law judges are treated.

So, that Michael O'Rourke's departure from the United States does not control that issue, the issue of due process of the law remains, which is the reason for this second hearing.

I think it important to note, however, in my view, the Immigration and Naturalization Service breached its obligation to this subcommittee and to the Judiciary Committee and to the Senate in deporting Mr. O'Rourke.

I say that because there had been commitments made by the Immigration and Naturalization Service that Mr. O'Rourke would not be deported prior to the completion of the hearings.

I have told this head on, eyeball to eyeball, to Commissioner Nelson. I thought the Service's action in deporting Mr. O'Rourke was wrongful and a breach of obligations and commitments which had been given to a number of Senators and had been relayed to me.

Commissioner Nelson sought to justify the deportation of Mr. O'Rourke on the grounds that Mr. O'Rourke agreed to being deported after the initial hearing and after the Supreme Court of the United States denied certiorari.

I responded to Commissioner Nelson that I thought that was not the point. The point was the obligation of the Immigration and Naturalization Service to the Senate of the United States.

But that is yesterday. I am not saying that whatever this hearing would find would have any bearing on the ultimate deportation of Mr. O'Rourke, it conceivably could. It conceivably could not.

It was my view that he should have been retained in the United States, in accordance with that commitment to the Senate, until these matters were concluded.

In any event, as I have said earlier, I think that the whole issue is due process of law and that issue remains whether Mr. O'Rourke has been deported or not and whatever Mr. O'Rourke's status may have been.

Because the history in this country on due process of law is to protect everyone without a predetermination as to whether they are innocent or guilty, protect everyone, and the protections of due process of law go to the guilty as well as to the innocent.

If there is anything that our constitutional government has taught us, it is that plain, legal principle.

At this time, I would like to ask the Honorable Ernest Hupp, former administrative law judge, Immigration and Naturalization Service, to come forward.

Our practice, Judge Hupp, is to swear everyone, so if you would remain standing while I administer the oath.

[The witness was sworn.]

Senator SPECTER. Judge Hupp, on behalf of this subcommittee and the full committee in the Senate, we thank you for your appearance here today.

We realize it is not an easy appearance from many points of view. You are now retired. You and I have talked on the telephone on a number of occasions. This is the first time that we have had an opportunity to be face to face.

I do thank you on behalf of the Senate for coming here, because we do believe it is a matter of importance. We believe it is a matter of importance to you as an administrative law judge and as a lawyer before that, and even in your retired status.

The Commissioner of the Immigration and Naturalization Service has been cooperative and I thank him for his assistance in encouraging you to come forward and testify.

I think that is important and I think that is to the credit of Commissioner Nelson and the Immigration and Naturalization Service.

Based on what I know of this matter and from our own telephone conversations, I believe you have something to say which is of great importance to the administration of justice in this country.

Judge HUPP. I am here to answer any questions that you may propound, Senator. I will cooperate in every way.

Senator SPECTER. That is fine and I thank you for that.

*** TESTIMONY OF HON. ERNEST HUPP, FORMER ADMINISTRATIVE LAW JUDGE, IMMIGRATION AND NATURALIZATION SERVICE, MILLERSVILLE, MD**

Senator SPECTER. First state your full name, please.

Judge HUPP. Ernest Henry Hupp, H-u-p-p.

Senator SPECTER. Had you been an administrative law judge with the Immigration and Naturalization Service?

Judge HUPP. Yes, and also the Executive Officer for Immigration Review, which is now the branch of the Department of Justice that the judges work under.

Senator SPECTER. How long had you held that position?

Judge HUPP. Five years.

Senator SPECTER. Starting when?

Judge HUPP. February 1979, in Philadelphia.

Senator SPECTER. When did you terminate? Retire?

Judge HUPP. February 1984, this year.

Senator SPECTER. What was your background prior to becoming an administrative law judge?

Judge HUPP. I had been a Federal prosecutor for the Immigration and Naturalization Service in deportation cases, Chicago—

Senator SPECTER. How long had you done that?

Judge HUPP. Roughly 4 years, Chicago, Washington, Baltimore, Minneapolis, various places throughout the Central and Eastern United States.

Senator SPECTER. What had you done prior to approximately 1975?

Judge HUPP. General attorney, examining applicants who were claiming citizenship and applicants who wanted to become citizens of the United States.

Senator SPECTER. How long had you done that?

Judge HUPP. From 1954 until 1975.

Senator SPECTER. When did you graduate from law school?

Judge HUPP. 1950.

Senator SPECTER. What did you do in the interval between graduation in 1954?

Judge HUPP. I had a private practice of law in the city of Baltimore, Md.

Senator SPECTER. Were you assigned, in the regular course of your duties, the administrative law position in proceedings involving Mr. Michael O'Rourke?

Judge HUPP. Yes, I was. The case came up in October 1979 when my wife and I were in Europe and Judge Nathan Gordon had the bond redetermination and set the bond in his case, that he should be held without bond.

Then when I came back to Philadelphia, then it was my responsibility to hear any deportation issues, separate and apart from the bond hearing, which Judge Gordon had conducted.

Senator SPECTER. Judge Hupp, what are, in general terms, the procedures for assignment in a case of this sort?

Judge HUPP. If the alien is apprehended within the jurisdiction of the area where you preside, then it is your responsibility to hear that case to its conclusion.

Senator SPECTER. How many hearings did you have in the case involving Mr. O'Rourke?

Judge HUPP. Specifically, I do not know, but I had one in Philadelphia, when he was being detained at a detention center in the city of Philadelphia.

Subsequently, he was removed to a Manhattan correctional center in Foley Square, New York City, and many times subsequent to the first hearing in Philadelphia, I had to go to New York and preside over his hearing in that city. But I never completed the case.

Senator SPECTER. Now, on one occasion, which has been the core issue in this case, you were followed, as it turned out, by the agents of the Immigration and Naturalization Service.

Would you start at the beginning of that workday and identify what day it was and tell us what happened.

Judge HUPP. Yes, it was a Friday, May 22, 1981. A friend of mine, who was a naval veteran from World War II, was visiting me in Philadelphia, because he has relatives there, Thursday, the day before, the 21st.

We made an agreement that we would go to Baltimore on Friday, the 22d, at 4:30 in the afternoon, and he would show me the route that he used to go to Baltimore, because I had been using Route 95.

Then that morning he came to work with me in my automobile and I started reviewing cases about 7 a.m. and he sat in the courtroom reading the newspaper, because court was not in session.

Senator SPECTER. You started your cases at 7 a.m.?

Judge HUPP. Yes, which is my procedure, 7 a.m., or thereabouts, every day, and normally I work until 5 p.m., or thereafter. I always work a 9-hour day, at least.

Then, Mr. Forentz left the court, when the court convened to hear cases, and he went about his own business and later on my secretary said that he had phoned to tell me that he was sick and he wanted to go home early, was there any way that I could get off early?

I said: "Well, I'll just sign out for annual leave and I'll go off at noon." So, then, he said, "All right, I'll meet you outside the courthouse where the exit is for the cars to come out and you can pick me up and take me to my car," his car was in Prospect Park, PA.

I did do that and it was a little before noon and when I left, I told my two secretaries, Ms. Anne Scott and Ms. Geraldine Bruno, that I was signing out for annual leave and that I would see them Tuesday, I hoped that they had a nice Memorial Day.

There was an investigator also in the office at that time, who heard me say these things at the time I left.

Then I went down into the area where the judges park and where my car was parked and I left, picked up my friend, we went to his car in Prospect Park, PA. He got his automobile and then he led the way down Route 95 south.

When we got to 322, he made a right turn, west, and I followed him. As we proceeded up the road, the traffic was nearly at a standstill and I found later on, when we approached the area where the congestion occurred, the road was apparently under construction and it was limited to one lane.

It was just a two-lane road, and they had to alternate east and west traffic. So, we got to the junction where No. 322 merged into Route No. 1, north and south, and he pulled in to get gasoline.

The thing that sticks in my mind as I made the turn from 95 into 322, a car behind, a black two-door automobile, Ford product, was so close that I thought he was going to hit me in the rear end.

I looked in my mirror and saw that there were two men sitting in that car. One of them had a beard and the other one was clean shaven.

Well, they were behind me and as the traffic was tied up, they had to remain behind me. So, then when I pulled into the gasoline station, while my friend got gasoline, I did not see that car any more. Then as we went south on No. 1, we stopped at a restaurant

in Pennsylvania, I think it was called Perkies, sometime after 1 o'clock, and had lunch.

Then after we had lunch, he proceeded south and I followed him. Then we turned off at a place called Fork, MD, which is a very very narrow road, and he had to stop, because he was injured in World War II and he was honorably discharged because of medical reasons, and he had to stretch his legs.

So, as we pulled into this little alcove a car went by that I did not pay too much attention to, but it was that black Ford product.

Then we proceeded through this State forest reserve in Fork, MD, and then finally go to Baltimore County, Hartford Road, and there we merged into the 695 Beltway.

Well, he lives in the northern part of the city of Baltimore, so when we approached the Charles Street exit, he waved and turned off, and I proceeded and I looked, and there is this automobile following me—that had been following me since I had left Philadelphia.

Well, I did not think too much of it. It had no license plate in the front and I did not know what kind of license plate it had in the rear, because I had never paid any attention when the car did go by on a couple of occasions when we had stopped.

As I got to the point where 695 has a turnoff to Route No. 301 south, I turned off, because I live in Millersville, MD, and I have lived there since 1977. My wife lived there by herself when I was in Philadelphia.

This car again was right behind me as I turned off of 695 into No. 3, and again it was so close I thought it was too close for comfort.

Well, then I became apprehensive and I thought it is more than a coincidence that this fellow is still following me, because he was behind me somewhere after 12 o'clock.

I did not know what time it was, maybe it was around 4-4:30, I do not know, but he is still behind me.

So, I stopped to get gasoline, because my car was low, and they sort of overshot where I turned to the left to get gasoline and he had to put it in reverse, and back up, and come to this side road and he just waited there while I got gasoline.

Then I became very apprehensive and thought: well, definitely, this car is after me for some reason or other.

Senator SPECTER. As you describe it, Judge Hupp, the people who were following you were taking much pains not to have you know it, were they?

Judge HUPP. I do not really know. I maybe look in my mirror to see what is behind me more than the average person, that is why I was cognizant of what was going on. Some people look in the mirror too much to see who is behind them.

Senator SPECTER. But you say that at many points they were very close to you?

Judge HUPP. Oh, very close. As I said, too close for comfort.

Senator SPECTER. At another point they drove beyond you and then backed around in a position—

Judge HUPP. As I was gassing up and—

Senator SPECTER. Where it was easy for you to see them from the position where you gassing up?

Judge HUPP. Oh, yes. So, then I decided, well, why go home, because these two men impressed me as being persons who mean me harm and I did not want to go home and expose my wife to any such possible harm, because she has had a heart condition since our two sons were in Vietnam in 1965 and 1966.

And she has suffered from angina pectoris from that point on to this day. And she cannot have any upset. So, I thought the best thing for me to do is to get the police and have them find out why this car has been following me all afternoon.

So, they had no telephone at the gas station, and I knew that the McDonald's was just maybe a quarter of a mile up the road, north, and they had a phone. I thought I would go there and call the Millersville police station, which was within a half of a mile or a third of a mile from where I was, and tell them.

Well, someone was on the phone, and I waited and waited, but it was one of those situations where the people on the phone did not seem to be in any hurry to conclude their conversation.

So, I noticed as I drove into McDonald's there was a BP gasoline station on the other side of this Old Mill Road, as it is called, and they sped in there, made a 180° turn and sat there in their car watching me as I came out.

Senator SPECTER. How far were you from the car, approximately, at that time?

Judge HUPP. About 100 feet maybe.

Senator SPECTER. They were in plain view of you?

Judge HUPP. Oh, yes; yes, indeed.

Senator SPECTER. Was there any way that they could have been in a position at some distance still maintaining a surveillance on you without it being so obvious to a person in your position that they were maintaining the surveillance?

Judge HUPP. I just have no thoughts along those lines, Senator.

Senator SPECTER. OK.

Judge HUPP. Then I got into my car and I drove from McDonald's right to the Millersville police station. And the Millersville police station sits back off of Route No. 3, which has two lanes, a southbound and northbound. Well, their headquarters is on the north lane.

So, I went from the north lane through a little area that is wooded more or less and then into the police department parking, and they were still behind me.

Senator SPECTER. How close?

Judge HUPP. They were 50 feet, I guess.

Senator SPECTER. Three or four car lengths?

Judge HUPP. Yes; so, then I pulled into a parking place where the police officers all park their vehicles and I saw a uniformed police officer and identified myself as being Immigration Judge Hupp and that I had been in New York that Wednesday hearing a case of an alleged Irish terrorist and I was fearful that I was being followed either by sympathizers of his IRA, Irish Republican Army, or actual members of the IRA, and they were trying to intimidate me, to show me that they knew who I was, where I lived, and they could have access to me any time they wanted. That was what was going on in my mind.

I told the policeman that I am fearful of my life actually, because these men had followed me all afternoon.

He said: "You go in to the desk sergeant, you make a report and I will see what these fellows are up to." When he walked away from me over to their car—and their car was heading in and they had to turn around and head back out—they were in such haste going out that they almost went into the northbound traffic and, noticing it was northbound, they spun their wheels and screeched and headed north with the flow of the traffic.

Senator SPECTER. At what point did their vehicle take that kind of sudden action?

Judge HUPP. After I had left the police officer that I was talking to in the parking lot and proceeded up to the main administration building to make a report to the desk sergeant.

Senator SPECTER. Do you know whether the policeman moved toward them at that time—

Judge HUPP. Oh, he did. He walked from me toward them.

Senator SPECTER. So, the policeman was moving toward the car and it was at that time that they sped away?

Judge HUPP. Oh, yes. So, the desk sergeant said: "I'll get two cars on them right away before they get too far away and I'm going to call the resident agent of the FBI in Annapolis," because they have jurisdiction over judges who are threatened or in some sort of jeopardy of their well-being.

So, he called the FBI agent and he made a full report and then I went on home—

Senator SPECTER. Did he make the report to the FBI agent in your presence?

Judge HUPP. Yes.

Senator SPECTER. Over the phone?

Judge HUPP. Yes; I have the agent's name in my file if you are interested in his name. Are you interested in his name?

Senator SPECTER. Yes.

Judge HUPP. It is FBI Agent John A. F-r-i-e-l, Jr.

So, I came home from the police station which has jurisdiction over the Anne Arundel County police in that area and somewhere, a little after 5 o'clock, FBI Agent Friel arrived.

Just a little before 5, I called the Baltimore Immigration and Naturalization Service office, because I spent as much time hearing cases in Baltimore as I did in Philadelphia, I was the only judge for those two jurisdictions.

I had cases coming up in Baltimore and, so, therefore, I felt I could talk to someone in Baltimore and tell them what had happened and to notify the director in Philadelphia because I did not feel it would be safe for me to go back to Philadelphia because of the fact of the possible harm that I was fearful of had initiated in Philadelphia.

I felt that that is where the seat of the trouble would be for me if I were to go back to that city.

So, Mr. Frederick Alfred Petersam, the acting district director, took my phone call and I told him about the incident, and he said: "Well, you better call the central office in Washington, DC, because they have procedures that they follow when any of the officers of the Service are threatened or in jeopardy."

Well, then I called the central office and the investigator on duty in the central office told me he did not know what to do about it, what did I want him to do.

I said: "Well, I thought you were trained to take the proper precautionary measures to protect officers of the Immigration and Naturalization Service who are fearful that they are in jeopardy by unknown sources."

So, he said, "Well, I'll make a note of it and maybe you can get a memo off to the Acting Commissioner," Mrs. Doris Meissner, at that time.

Well, at that time the agent came. I was very upset. I was trembling very, very severely. The agent came in and he took a statement.

Senator SPECTER. You were at your home at this time?

Judge HUPP. I was at home. My wife was there.

Senator SPECTER. This was the evening?

Judge HUPP. It was a little after 5 p.m.

Senator SPECTER. Late in the afternoon?

Judge HUPP. In the afternoon. Then I told this agent just what I had told the court here today, and he said he would put out an all-points bulletin for the car, which as the car sped away from the Millersville police station, it was the first time I could see it had Pennsylvania license plates on that car.

He did then notify the FBI offices in Philadelphia and New York to be on the lookout for this car. In the meanwhile, he had ascertained that the two police cars from Anne Arundel County did not overtake this vehicle that was fleeing from the police station, a black Ford automobile, probably a Mercury or Thunderbird.

Senator SPECTER. Do you know if those two police cars were dispatched immediately on your complaint to the Millersville—

Judge HUPP. That is what the desk sergeant told me, he was going to send two cars after that car and try to overtake them before they got too far off the road.

The next day, I was very very upset. I could not sleep that night, nor could my wife. And we were more or less both trembling.

So, I went to my doctor, Edward Kalins—

Senator SPECTER. You say you both were more or less trembling. How was your wife at this time?

Judge HUPP. Well, she was very, very upset. In fact, the next day, when I went to Dr. Kalins, my wife and I both went. His office is in Baltimore.

He examined my wife and he also examined me.

Senator SPECTER. Were you suffering from any problems at that time, Judge Hupp?

Judge HUPP. Prior to being followed, I think I was in excellent health. But Dr. Kalins, when he examined me, said that I had serious problems of being on the verge of a stroke from the shock and fear that I was in, because of thinking these people who were behind me were assassins really.

He said that my wife had a severe mental depression at the time of his examination and he said that this could persist indefinitely as a result of this trauma that we had both gone through on May 22.

He told me that I could not only have had a stroke, but I could have had a heart attack.

So, he prescribed medication and I got medication for myself and for my wife and then he said to come back on Tuesday, the 26th.

Meanwhile, before I went to the doctor's on the 26th, I called Mr. Petersam in Baltimore to see if he had relayed the information to the District Director, Mr. Karns, in Philadelphia, that I was not going to be there because I was under a doctor's care.

At that time, Mr. Petersam said:

Well, we have some detainees that we have picked up and they are in detention, if you could hear their cases for bond redetermination, I would appreciate it, because we cannot get any other Judge. Since you go right by the office to go to the doctor, I would like for you to stop by and dispose of these cases.

So, at that juncture, I went in and I heard the cases in Baltimore before I went to the doctor's. Then I called my supervisor, which was Chief Judge Monsanto, in Miami and I told him the entire series of events and what occurred.

Thereupon, Judge Joseph Monsanto, who is the Chief Immigration Judge, the only person who had supervision over the Immigration Judges, suggested I write a letter to Doris Meissner, the Acting Commissioner, and report to her in detail what had happened, which I did do.

At that time, when I spoke to the chief judge on the 26th, which was a Tuesday, I told him that I could not continue on this case, because of the fact that I did not know how long I was going to be on sick leave, because I certainly was in no condition to work and I could not think of anything but somebody is going to put a bomb on my house, or on my car, or are they going to shoot me with a shotgun as they had been doing in Philadelphia that year of 1981.

I am sure you are aware of the shotgun slayings that occurred in Philadelphia. Different people made the news media.

Senator SPECTER. Which year?

Judge HUPP. 1981.

Senator SPECTER. Almost any year.

Judge HUPP. Yes, right. I had no intention of returning to Philadelphia until I knew what was going on.

So, Mr. Petersam said he would make his secretary available to me so that I could dictate a memo to the acting commissioner, Doris Meissner, and also a statement of recusement to the Chief Immigration Judge, so that they could assign another judge to hear the case, not knowing how long I would be off, and if I would ever be back, because I was eligible to retire long before this incident occurred.

So, then after I disposed of these cases in Baltimore and dictated the memos, I went to the doctor and he looked at me again and he looked at my wife and he said, "Well, you cannot go to work for the remainder of the week. Stay home, take the medication and we will see what happens. Come back later on in the week, maybe Saturday."

In the meantime, the Anne Arundel County Police had my entire area, which is known as Hillandale, under police patrol, where a radio car came through this community every hour or so to see if anything unusual was stirring in the community.

Well, then, at the end of that week, I believe, as I recollect, I had cases to hear in Baltimore and since I had no intention of going back to Philadelphia at that time, I did go back to Baltimore, because the doctor said that it would not upset me to be in Baltimore. It was Philadelphia that I was fearful of being at that time.

So, I heard these cases in Baltimore and the last day of that week, which was a Friday, I think it was May 29, the other memo had been prepared for the recusement and I signed that memo and sent it off.

The other one for the 26th had already gone off and the one for the 29th was the actual recusement, where I notified Judge Monsanto, the acting chief, judge, that I had to recuse myself because of the fact that I was unjustly intimidated and harassed and I believed that this all evolved from my presiding in this case, but I did not know from what corner this was coming.

I had no idea that I was being harassed by the Immigration Service, and my reason for that is anybody who works for the Federal Government knows when you are on annual leave, only when you are on sick leave, to see if you are actually going to the doctor or the dentist or going to the golf course or the tennis courts or something of that sort.

So, it never occurred to me that on annual leave I am being followed by the INS agents.

Senator SPECTER. Was there any basis for anybody in INS believing that you were abusing sick leave?

Judge HUPP. None that I am aware of.

Senator SPECTER. Any basis for anybody believing you went to the golf course or the tennis courts?

Judge HUPP. No, sir. I do not play golf, do not play tennis. I bowl and I swim. I have something that I think is very important to this matter and it is a memo from Judge Joseph Monsanto, the acting chief judge, dated July 29, 1981, to Doris Meissner, the acting commissioner, central Office.

It says:

The attached memo from Judge Hupp is a request which should be honored as he is entitled to know the result of the investigation. I might add here, parenthetically, that a more satisfactory resolution could have been reached if the Chief Immigration Judge had first been made aware of the complaint.

The recent incident involving Judge and Mrs. Hupp is unworthy of a professional approach and is detrimental to my managerial responsibilities. I am requesting by these means, therefore, that in the absence of a serious allegation of misconduct by a Judge in the future, that all minor complaints such as the one in this case be referred to me for appropriate disposition.

Thank you for your attention to the matter.

Subsequently, on August 11th, I received a letter from Doris M. Meissner, Acting Commissioner:

I am pleased to inform you a thorough inquiry was conducted concerning an allegation that you were leaving your official duty station without charging any appropriate leave.

The inquiry did not sustain the allegation. No further action is contemplated. I am sure that as a professional officer, you will appreciate the necessity for investigations into all allegations of employee misconduct.

I regret any hardship or inconvenience you might have experienced as a result of this inquiry. As to our policy, no record of this inquiry will be placed in your official personnel folder.

What clears the whole thing up, in Baltimore, when I had hearings there on Friday, I guess it was the first Friday in the month of June 1981, an official of the Immigration and Naturalization Service identified himself by badge and I.D. card, as one, Agent Gerry LaSalle, and he had with him another man that I had never seen before, but I recognized Gerry LaSalle as being the driver of this automobile that had followed me on the 22d.

And he had taken a statement from me about the charge, and he showed me a piece of paper from a pad where someone had holographically written out a baseless complaint that I was leaving and that I was not charging my time—and no one could really make such a complaint, because I was keeping my own time as do all the other Immigration judges and there would not be anyone who knows what my time and attendance report looks like except me because I kept my own time and attendance.

Now, the 29th of May, if I am correct, at 9:30–9:35 p.m., my phone rang at home——

Senator SPECTER. Before you go to that, Judge Hupp, did agent LaSalle question you and take a statement from you?

Judge HUPP. That is correct.

Senator SPECTER. The first Friday in June?

Judge HUPP. Yes, sir. You wish for me now to go back to the 29th when he spoke to me on the telephone?

Senator SPECTER. Yes. Do you have a copy of the statement which he took from you?

Judge HUPP. They never gave me a copy.

Senator SPECTER. He spoke to you on the phone, you say?

Judge HUPP. No, this is preceding the statement where I was confronted by Agent LaSalle. This now relates back to the 29th of May, 1981. I was home.

Senator SPECTER. You go ahead, Judge Hupp, and you relate it in your own way.

Judge HUPP. My wife and I were watching television. The phone rang. We have an unlisted number. We have always had an unlisted number, since our sons were in Vietnam and people would call us up and harass us saying that they hope they get killed over there and things of that sort.

So, we had an unlisted number ever since 1964 or 1965. One of my sons is right here. He was a Major in the U.S. Army/Infantry, Dennis Hupp.

So, Agent LaSalle identified himself on the phone, telephonically, and told me he is the one that was following me on the 22d of May and he did not want me to worry anymore because he had reached the point in his investigation where he concluded that this was some sort of a frivolous complaint which did not merit any further investigation.

He would himself see me in Baltimore that following Friday, which he did, and he took a statement from me.

Senator SPECTER. Well, if he said it was a frivolous complaint, what justification did he give you for taking a statement from you?

Judge HUPP. To clear up the case, because he saw no more need to continue. He said he had been on my tail for more than a month.

Senator SPECTER. But he did not give you any further justification for taking a statement after saying it was frivolous and unresponsive?

Judge HUPP. Well, that is part of his responsibility to wrap up the investigation.

Senator SPECTER. What happened next?

Judge HUPP. Well, then I found out that Gerry LaSalle was the one that was following behind me; of course, he was acting under orders, he said he certainly did not embark on this alone, on his own volition.

Then I was relieved. And as I stated, I worked that following week in Baltimore hearing cases there and then after that I went on vacation. I came back and I think I worked that following week in Philadelphia. Then I went on vacation again.

Then, I believe, subsequent to that, I had to go to San Juan to hear cases there for a couple of weeks. And then I went to Morgantown, WV, to a Federal detention center and heard cases there and then—

Senator SPECTER. Well, Judge Hupp, let's come back just a little bit in time. When I talked to you on the telephone on March 29, 1984, in the early evening, starting about 6:30, we talked for some time, you had told me at that time that you returned to your office in Philadelphia the following Monday in June.

At that time, you had been advised by the secretary there that the records of the proceedings in the O'Rourke matter had already been removed from your office.

Judge HUPP. Yes, I believe that was early in June.

Senator SPECTER. Go back to that.

Judge HUPP. I do not have any definitive recollection as to whether that was after I heard cases in Baltimore or whether it was before I heard cases in Baltimore and saw Agent LaSalle. That, I do not recall.

Senator SPECTER. Well, you testified that you heard cases in Baltimore on Friday, May 29. That is what you testified here today.

Judge HUPP. The hearings in Baltimore were the 26th, on Tuesday. On Friday, the 29th, I merely signed my recusement. I did not hear any cases that I can remember.

Senator SPECTER. So, you heard some cases in Baltimore then on the 26th, which would have been—

Judge HUPP. The day after Memorial Day.

Senator SPECTER. Tuesday, the 26th?

Judge HUPP. Right.

Senator SPECTER. Did you go to Philadelphia on the following Monday in June, which would have been—

Judge HUPP. I do not think I went to Philadelphia until I found out from Gerry LaSalle that he was the one who followed me.

Senator SPECTER. Well, you found that out on the 29th?

Judge HUPP. Right, so then perhaps that next Monday, I might have gone to Philadelphia. I really do not know, but I know I worked the whole week—the first week of June.

Senator SPECTER. Well, the following Monday would have been Monday, June 1. What is your recollection as to when you went back to Philadelphia?

Judge HUPP. When I did go back to Philadelphia, it was in June, and as I said, I had spoken telephonically with Gerry LaSalle on Friday, May 29.

Senator SPECTER. Did you go back to Philadelphia the following Monday after the 29th?

Judge HUPP. I really, at this time—not having my records before me—I just do not know whether I had cases in Baltimore all that week or part of the week, but I do know on the first Friday in June I was in Baltimore hearing cases when Gerry LaSalle—it seems to me I had more hearings in Baltimore that week than just plain Friday, I just could not say definitively without my schedule.

Senator SPECTER. But at the time you went back to Philadelphia, whenever that was, you found that your records in the O'Rourke case had already been removed?

Judge HUPP. They were transferred to New York according to my law clerk, Ms. Gerry Bruno.

Senator SPECTER. Well, when I talked to you back on March 29, you had expressed surprise to me that the records had been removed from your Philadelphia office so promptly.

Judge HUPP. Well, that is right, because I had never signed an order for the change of venue.

As I indicated, I was the judge assigned to that case when I came back from Europe in the first part of November 1979, and I had never signed any order for a change of venue to New York, because of the fact that Judge Francis Lyons, in New York, took over after I recused myself.

So, that would be—in my opinion, the proper procedure for me to be relieved of further responsibility in the O'Rourke—signing the order for a change of venue so that a judge in New York, Francis Lyons was the judge who subsequently heard the case and completed it—

Senator SPECTER. So, as you are testifying, in the normal course of appropriate procedures, you would have signed a document for a change of venue before those records would have been taken from the Philadelphia office and sent to the New York office?

Judge HUPP. Yes, because the New York judge was then going to preside over the case.

Senator SPECTER. At some point, then, you came to the Philadelphia office and you found those records taken.

Judge HUPP. Yes, they were gone.

Senator SPECTER. Were you surprised by that?

Judge HUPP. Yes, I was.

Senator SPECTER. What, if anything, did you say to anyone?

Judge HUPP. I said to Ms. Bruno, my law—court clerk, I said, "My golly, they did not waste any time transferring these files to New York." I said, "I haven't even signed any order for a change of venue."

She said, "Well, the District Director had them transferred." She worked for the District Director. No one worked for me. I was just an Immigration Judge working in the Philadelphia office the Immigration and Naturalization Service.

Senator SPECTER. This person's name is Bruno?

Judge HUPP. B-r-u-n-o. Yes.

Senator SPECTER. Is that a lady or a gentleman?

Judge HUPP. A lady.

Senator SPECTER. A secretary in the office?

Judge HUPP. She is under the title of clerk of the Immigration Court.

Senator SPECTER. Clerk of the Immigration Court?

Judge HUPP. Yes. She worked for the District Director. He evaluated her and gave her her efficiency rating; she did not work under my supervision, because nobody worked under my supervision.

Senator SPECTER. So, Clerk Bruno reported to the District Director?

Judge HUPP. Had—

Senator SPECTER. Where did you have these records? Did you have a desk? Do you have a desk that is locked?

Judge HUPP. There are drawers in her office, filing cabinets, steel filing cabinets, and the records of proceedings were maintained by her in the immigration courtroom and also in her office, because the space was very confined and some of the records were in her office and some were in my court.

Senator SPECTER. Judge Hupp, when you and I talked on the 29th, and I wrote this down, you told me that at the juncture of recusal, "there was nothing in the record to preclude me from giving O'Rourke adjustment of status."

Judge HUPP. I recall telling you that and as I have a recollection of the record which I have not seen since May 20, I guess, when I was in New York City.

There was nothing in the record at that time which would preclude this young man from being adjusted to lawful permanent resident of the United States, since he had all the requisites that are necessary for him to be granted this status as a matter of administrative discretion.

I was leaning more or less in favor giving him that adjustment.

Senator SPECTER. In plainer English, you were going to find in his favor and leave him in the United States?

Judge HUPP. Yes. He had no record of violence in this country. He had a clean record in this country. We admit people into the United States who are murderers from other countries as long as they have been associated with a political group who want to overthrow the Government.

There are many cases in the Immigration and Naturalization decisions where people who have murdered people in foreign countries as a part of their organization have been admitted to the United States.

This man, in my opinion, had no dastardly record such as I have read of other people who have been permitted to stay here.

Senator SPECTER. As you describe your inclination at that time, to leave him in the United States, had you said anything of record which would have given people of the Immigration and Naturalization Service cause to know your inclination was in that direction?

Judge HUPP. Well, on the Wednesday, which was preceding the 22d, when I was followed, as I said, I was in New York.

At lunch time there was Special U.S. Attorney Belote and Trial Attorney Richard Sharkey, from Philadelphia, and I. We were walking around in the yard outside of the U.S. courthouse.

They had an Italian motif there, all decorated in Italian flags and so on. They said, "Well, Judge, how is the case going?"

I said: "Well, it is going all right."

I said: "So far as I can see, there is nothing that would preclude me statutorily from granting this man the relief he seeks. However, the record is not yet complete, because two State Department witnesses have yet to testify and I want to run this hearing until such time as they can testify and wrap it up today."

But that never was able to be completed, because I had found out from the train schedules when the last train was that I could possibly get to go back to Philadelphia.

I had left Philadelphia 6 o'clock that morning and this was late, maybe, 6:30 to 7 p.m., when I did go back, and I did not want to keep the court in session to complete testimony for the two witnesses from the State Department, because there was just not enough time in that day. I was exhausted.

Senator SPECTER. What was the scope or the expected testimony from the two State Department witnesses?

Judge HUPP. Well, from what the Special U.S. Attorney Belote had testified in court, they were going to state that it would be detrimental to the best interests of our relations with Britain and Ireland if this man were to be permitted to stay here.

This would then set up a possible *modus operandi* for future terrorists to come here, marry a citizen and stay. And they wanted to preclude that, because they could not in any way, shape, or form do that if I were to set a precedent allowing him to stay here.

Senator SPECTER. Well, would that be the kind of testimony that would be likely to have you change the view you have already expressed?

Judge HUPP. Well, I do not know, because I did not hear what they said. Judge Lyons was the one who heard their testimony and I never reviewed the record of proceedings after I recused myself from the case.

Senator SPECTER. But you had had the conversation that you described with these Immigration and Naturalization Service agents and told them your leaning was to let O'Rourke stay in the country?

Judge HUPP. Yes, that Wednesday when I was last in New York. I said I saw no reason why he could not be permitted to stay here. The fellow has a clean record in the United States.

He could not be extradited back to Britain or Ireland because there are no extradition treaties allowing this and that is why INS, I assume, was so intent on having him deported.

Senator SPECTER. As I understand it, from previous conversations you and I have had, you knew what these two State Department witnesses were going to testify to in a general way at that time?

Judge HUPP. Generally.

Senator SPECTER. Because they customarily make a plea on behalf of the State Department as you would expect them to in accordance with their duties to advise the Immigration and Naturalization Administrative Law Judges what problems they felt there would be for the State Department.

Judge HUPP. I had the prerogative of refusing to allow them to testify if I did not think their testimony had a bearing on the case.

So, I thought their testimony would have a bearing on the case and would help me formulate a decision, and that is why I was disposed to have the hearing at another date, so that I could get their testimony into the record.

Senator SPECTER. You were going to hear their testimony, you had decided to do that, you pretty well knew what their testimony was going to be?

Judge HUPP. Yes.

Senator SPECTER. At the time you made the statements to the Immigration and Naturalization lawyers that you were inclined to leave O'Rourke in the United States?

Judge HUPP. And Mr. Belote testified, as I recall, in court that there were precedents for this, because in the past Iranian subjects in the United States had married U.S. citizens and their government wanted them returned to Iran.

The judge denied the adjustment of status and ordered them to be deported as a matter of discretion because we did not, at that time, want to have any strained relations with the Shah of Iran on allowing his subjects to marry Americans and stay here. Those were two precedent cases that Tom Belote cited to me in court and which I researched and found that these were the two cases they were leaning on for their position.

Senator SPECTER. Judge Hupp, to try to abbreviate the proceedings as much as we can, let me refer you to a memorandum which was sent to you by District Director Karn dated October 17, 1980.

Judge HUPP. I believe I have a copy of that.

Senator SPECTER. If you do, would you just read that into the record, please.

Judge HUPP. October 17, 1981, the citation is PHI-73/9-C, Lyle L. Karn, District Director, Philadelphia, Form DJO 296, Time and Attendance Report, Ernest H. Hupp, Immigration Judge, Philadelphia, PA:

In view of the fact that you spend so much time away from the Philadelphia District during the course of any given month, I do not feel that I can in good conscience continue to certify that the hours noted on your time and attendance report are correct. I have also noticed, on Fridays, which you keep open for writing decisions and doing research, that you are away from your desk from noon on.

Upon checking further, I am informed that you have indicated that research is necessary away from the office either in the law library in this building or a library elsewhere.

In addition, I do not feel that Katherine Knowle, who routinely posts the hours on your time and attendance report without question should be burdened with this responsibility, when she also is unable to state that the hours posted thereon are correct.

I feel that the foregoing justifies the action I am taking which is as follows: I am directing that Ms. Knowle no longer maintain your time and attendance report. I see no reason why you cannot post the hours yourself, thus removing any question in anyone's mind. Also the time and attendance report for pay period ending October 18, 1980, has been forwarded to Stanley E. McKinley, Eastern Regional Commissioner, for his action.

It will be necessary that you contact him regarding this and any future certification of your time and attendance report.

Senator SPECTER. Did you reply by memorandum dated October 30th?

Judge HUPP. I did.

Senator SPECTER. Would you read that into the record?

Judge HUPP. Yes. [Begins reading.] "Ernest H. Hupp, Immigration Judge, Philadelphia, Form DJO"—

Senator SPECTER. Why don't you just move right to the substance.

Judge HUPP. OK.

To Lyle L. Karn, District Director. This will acknowledge receipt of your memo concerning the above-captioned subject.

I do recall that you did phone me about 3:00 p.m. on Friday, October 17, when I was hearing Immigration cases in Baltimore, MD. You then informed me of the existence of the heretofore cited memo. You stated telephonically that you no longer would continue to certify that the hours noted on my T&A report were correct. Further, you stated that Miss Knowle would no longer be burdened with the responsibility of posting my hours on the T&A.

Undoubtedly, you recall that I advised you that I fully concur with the action taken by you that I would sign my own T&A records henceforth as do the other Immigration Judges.

I am not aware of any situation where the Immigration Judge is responsible to the District Director for supervision. And I feel that it is indeed undesirable and inappropriate for you to sign my Form DOJ 296 where the signature of my supervisor is required.

Therefore, I am following the procedure of all other Immigration Judges and have signed my own T&A for pay period No. 23 and will continue this procedure unless directed otherwise by appropriate authorities. Ernest H. Hupp.

Senator SPECTER. All right, now, Judge Hupp, trying to just come to the center of the matter, you discussed this matter with chief counsel of this Subcommittee on Juvenile Justice, my subcommittee, Ms. Mary Louise Westmoreland—

Judge HUPP. Yes.

Senator SPECTER [continuing]. On a number of occasions, but on one occasion, June 15, 1984—

Judge HUPP. Yes.

Senator SPECTER. To come right to the center of this issue in the interest of time and putting all things squarely on the table, according to what Ms. Westmoreland reported to me in her memorandum, you said, "I believe that District Director Karn," Lyle Karn, "was behind the complaint that led to my being followed."

Judge HUPP. Yes.

Senator SPECTER. Is that accurate?

Judge HUPP. Correct.

Senator SPECTER. Why did you feel that way?

Judge HUPP. Well, as I told your associate, the day he arrived in Philadelphia as District Director or the day thereafter, which was the summer of 1979, he called me into his office and he had a copy of my schedule, which I myself prepared and submitted to the chief judge, Herman L. Bookford, who approved it.

He said he did not approve of my schedule. Henceforth, he would tell me where I would hear cases and when I would hear cases and that he would talk to the Director in Baltimore and that the Director in Baltimore and he would determine when I would be in Baltimore and when I would be in Philadelphia, which, of course, he had no authority to do. And I told him so.

From that time on, he and I did not seem to see eye to eye, because he thought he was my supervisor, where, in fact, my supervisor was Chief Immigration Judge Herman L. Bookford, in Washington, DC.

Senator SPECTER. Judge Hupp, what else, if anything, occurred in your relationship with Mr. Karn that led you to feel that he was behind the complaint that led to your being followed?

Judge HUPP. Well, every Friday that I was working in Philadelphia, he would stop by and see how things were going; and as I indicated in my memo, if I was in Baltimore, he would use some subterfuge to call me in Baltimore and want to see me when I got back to Philadelphia next week, which is merely checking up.

Then when I was working in other places, many times he would call and have some minor thing that he wanted to talk to me about, and then on the occasions when I was in the library in the U.S. Courthouse, 601 Market Street, on Friday, doing law work, preparing decisions, one of his men would come up—many times I saw Donald Ferlies, the trial attorney, come in the library, walk all around, look and leave.

Then I would finish my work in the library and I would be back in my chambers and Ms. Knowle who was then the secretary would say, "The District Director was here checking on you again."

So, I mean, it was obvious to me that this man was constantly harassing and checking on me the whole time I was in Philadelphia.

Senator SPECTER. Had there been some disagreement between you and Director Karn concerning your action on deportation cases involving Iranian students?

Judge HUPP. I did not hear the last part of that statement.

Senator SPECTER. Involving Iranian students. According to—

Judge HUPP. Oh, yes, well, the Immigration Services throughout the United States started rounding up these Iranians whom they alleged were out of status as a result of the detention of the American State Department employees in Iran. So, that resulted in many many Iranians being brought under proceedings throughout the United States, and there was a big drive to give those cases priority.

Senator SPECTER. Judge Hupp, let me boil it down and see if this is a correct statement that is in Ms. Westmoreland's memorandum concerning her conversation. She writes that you told her that in the winter of 1981:

I, Judge Hupp, presided over several deportation proceedings involving Iranian students. I, Judge Hupp, had ruled against deportation in many of these cases. And Mr. Karn was upset with these decisions.

Judge HUPP. Yes, that is the information that I had gleaned from talking to various attorneys and various INS personnel in the office as well as newspaper articles where the trial attorney that I had mentioned, Donald Ferlies, allegedly had said in one of these hearings, "Isn't it true that," to this Iranian, "you are only over here to spy for your country," which, of course, the attorney for this alien objected to and I sustained the objection. That hit the news media also—

Senator SPECTER. Judge Hupp, had there been a proceeding where Mr. Karn was cross-examined during the course of the O'Rourke matter where there was an objection or disagreement between you and Director Karn with his not liking the way you were handling the case?

Judge HUPP. Well, from what you indicate, I assume that was early in November 1979.

Senator SPECTER. Approximate some of the matters that you talked about——

Judge HUPP. Yes, I came back from Europe in November 1979, became aware of the *O'Rourke* case and I set a hearing on his deportation charges in the U.S. courthouse in Philadelphia.

At that time, Mr. Karn and Donald Ferlies, the trial attorney, sat at the Government counsel table and the attorney then representing Michael O'Rourke, who happened to be James Orlow, Esq., asked that Mr. Karn be permitted to testify on his own voir dire as to why the warrant for arrest was issued in that matter.

During the course of the testimony that Mr. Karn gave, he showed that he did not know at that time the procedure involved in the issuance of a warrant of arrest, because when the question was asked of him, "Was there application for a warrant of arrest ever issued prior to your signing a warrant of arrest," he answered, "No." And the regulations clearly state that that is the procedure.

Then when he was asked by Mr. Orlow how he knew this person was an alien, because you must have particular facts to enable you to conclude why this person was picked out to be an alien before you can proceed against him, he said because one of his agents, I think Mr. Britt, had told him this man had talked to Britt and this man had a distinct Irish brogue and that is why he knew this man was an alien and had signed the warrant of arrest and deportation. It is all in the record of proceedings for that day.

Senator SPECTER. Well, at that time, Judge Hupp, did you permit the cross-examination of Director Karn over strenuous objections by his lawyer?

Judge HUPP. Yes.

Senator SPECTER. Without foreclosing some further comments by you, Judge Hupp, I would like now to ask Director Karn to come forward if he would. I have had a request that a short statement be given by Mr. Craig Raynsford prior to Mr. Karn's statement. That will be fine.

TESTIMONY OF CRAIG RAYNSFORD, ASSOCIATE GENERAL COUNSEL, IMMIGRATION AND NATURALIZATION SERVICE

Mr. RAYNSFORD. Thank you.

Senator SPECTER. Would you identify yourself for the record, please. You are appearing as counsel—you are not a fact witness. Are you a fact witness?

Mr. RAYNSFORD. Pardon me?

Senator SPECTER. Are you a fact witness?

Mr. RAYNSFORD. No, I am not.

Mr. Chairman, members of the committee, ladies and gentlemen, my name is Craig Raynsford, I am Associate General Counsel of the Immigration and Naturalization Service, U.S. Department of Justice.

For your hearing today, we have brought with us Mr. Lyle Karn, per your request, as well as Mr. Walt Connery, Mr. Ted Weiss, and Mr. Lou DeMartinis.

We would like to make a brief statement with respect to the fact that the individual who the hearing is about today, Mr. Michael O'Rourke, was deported from the United States on June 19, 1984, following a denial of certiorari by the U.S. Supreme Court on June 18, 1984, with respect to his petition before that Court.

Further, at the time of Mr. O'Rourke's removal, in order to effectuate his expedited removal, Mr. O'Rourke through counsel voluntarily stipulated that all legal challenges to his removal be withdrawn and executed and signed a voluntary statement requesting that he wished to return to Ireland at that time. We have both copies—copies of both documents ready for the committee if they would like to receive them and we are ready to proceed at this time on behalf of the Government.

Senator SPECTER. Thank you very much, Mr. Raynsford. We appreciate your being here and we appreciate your having made those individuals available, and as you doubtless noted in my opening statement, I have already referred to Commissioner Nelson's representation to me that there had been a signed statement by Mr. O'Rourke that he did not wish to contest going back, he went back voluntarily.

I have already said what I have to say about my view of that as regards to the Immigration and Naturalization Service and the Senate.

But we do welcome you here and we appreciate the statement.
[Material for the record, submitted by Mr. Raynsford, follows:]

MAY 1 1984

SIGNED AND MAILED

CO 703.1530

Honorable Arlen Specter
United States Senate
Washington, DC 20510

Dear Senator Specter:

This is in reference to your continued interest in the case of Michael O'Rourke and acknowledges receipt of your recent letters addressed to the Attorney General and me in this matter.

Mr. O'Rourke, a native and citizen of the Republic of Ireland, arrived in the United States on February 16, 1978, and was inspected and admitted as a non-immigrant visitor authorized to remain until March 9, 1978. At the time of his arrival, he presented an Irish passport issued in the assumed name of Patrick Mannion. Upon inspection by Immigration authorities, he did not disclose his true name nor his fugitive status and he was admitted under the false identity. He did not depart upon the expiration of his authorized stay nor did he seek any extension.

In October 1979, Mr. O'Rourke was apprehended by officers of the Immigration and Naturalization Service (INS) and deportation proceedings were initiated on the ground that he had remained in this country longer than authorized. Following a hearing before the Immigration Judge, Mr. O'Rourke was found deportable on July 12, 1982. He took an appeal to the Board of Immigration Appeals and on May 24, 1983, the Board dismissed the appeal. Enclosed is a copy of the order of the Board which provides background information regarding Mr. O'Rourke's case. A petition for review was filed in the United States Court of Appeals for the Second Circuit, New York, on May 26, 1983. On February 21, 1984, the Court dismissed the petition for review filed on behalf of Mr. O'Rourke.

I am enclosing a copy of the order of the Court of Appeals addressing this matter. The Court's decision dismissed the petition for review and issued the mandate permitting Mr. O'Rourke's deportation pursuant to current immigration law. However, the Court granted Mr. O'Rourke a stay of deportation until April 2, 1984, in order to allow him the opportunity of filing a writ of certiorari before the United States Supreme Court. Petition for certiorari has been filed, and the language of the order of the Second Circuit granting the stay maintains that this stay shall be in effect until such time as the Supreme Court determines the outcome of the petition for certiorari. Mr. O'Rourke will, of course, not be removed while such stay is in effect. However, if the Supreme Court denies certiorari, the Government will immediately proceed to execute the deportation order in accordance with the law. No further administrative delays of deportation will be given.

Congressman Robert A. Borski has introduced private bill H.R. 4781 in the House of Representatives and you have introduced S. 2257 in the Senate, on behalf of Mr. O'Rourke. My information at this time indicates that a report has not been requested by either Committee on the Judiciary. Pursuant to agreement with the Committees, it is the policy of the Service that in the absence of a Committee request for a report the introduction of a private bill will not serve to defer the removal of the beneficiary alien from the United States. Thus, if certiorari is denied and neither Committee on the Judiciary has requested a report on the respective private bill, it will be the duty of INS to remove Mr. O'Rourke from the United States pursuant to the order of deportation. Such action would certainly be appropriate given Mr. O'Rourke's past criminal activities.

Following apprehension by INS officers, Mr. O'Rourke was detained pursuant to the authority to detain deportable aliens contained in section 242(c) of the

Immigration and Nationality Act. He was denied release under bond by the INS District Director at Philadelphia. A motion for bond redetermination was filed with the Board of Immigration Appeals and upon consideration of the serious criminal charges facing Mr. O'Rourke should he be returned to Ireland the Board denied the motion on March 19, 1980. He filed a writ of habeas corpus to compel his release under bond pending a resolution of his deportation proceedings.

A review of Mr. O'Rourke's past criminal activities clearly indicates he is the type of individual who is extremely dangerous to the security of any nation. He was convicted in the Republic of Ireland for possession of explosives and firearms and sentenced to six years in Port Laoise Prison. He escaped by exploding a bomb in a court holding pen while waiting to testify at a trial and then entered the United States illegally. These criminal activities were addressed by the United States District Court of the Southern District of New York in Mr. O'Rourke's habeas corpus action alleging that he was being unlawfully detained without bail pending a resolution of his deportation proceedings. In denying the writ and upholding the decision of the Board of Immigration Appeals that Mr. O'Rourke not be released from custody, the Court noted his dangerous character stating "His prior escape demonstrates that he is willing to utilize illegal, even violent, means to avoid serving his sentence...." O'Rourke v. Warden, Metropolitan Correction Center, 539 F.Supp. 1131, 1137 (1982).

The Second Circuit Court of Appeals explicitly recognized Mr. O'Rourke's dangerousness and dismissed Mr. O'Rourke's assertions that his crimes were politically motivated stating:

Petitioner's argument that he has a well-founded fear of political persecution rests primarily on the claim that his offenses were political and that punishment for them would be persecution. This is not a persuasive argument. The Republic of Ireland has a valid non-political interest in protecting its citizens from serious crimes. The illegal possession of explosives and firearms presents a potential threat to any society in terms of danger to person and property no matter who is the possessor or what his motives might be. The non-political nature of the Irish Government's interest and the serious nature of the crime removes prosecution and punishment for these offenses from the realm of political persecution. Michael O'Rourke v. U.S. Immigration and Naturalization Service, No. 83-4187 (2nd Cir., February 21, 1984).

For a further review of these activities, I have also included a copy of the Government's brief filed before the Second Circuit. This includes at length a description of Mr. O'Rourke's activities with the Irish Republican Army. The nature of Mr. O'Rourke's criminal activities, and his complete disregard for the safety and lives of others, firmly convinces me that his removal would be in the best interest of the American people.

In the past, you have expressed concern regarding the integrity of the administrative review accorded Mr. O'Rourke and specifically the recusal of Immigration Judge Ernest J. Hupp from the case. Please note the Circuit Court's comments at the end of the opinion wherein it summarily dismissed the issue, stating: "Petitioner's due process claims arising out of Judge Hupp's decision to recuse himself are so lacking in substance as to merit no discussion" (emphasis added). I firmly concur with the Court's opinion on this issue. The Department of Justice internal investigation has clearly shown that there is absolutely no merit to any charges of intimidation. Even if such charges had any merit, which they do not, it would hardly have had relevance to the overall determination of whether Mr. O'Rourke had any grounds for claiming asylum or legal ability to be granted authority to remain in the United States in view of his extensive criminal record in Ireland and various misrepresentations made to United States officials. Of interest in this regard is the enclosed copy of a recent press interview with the Prime Minister of Ireland.

I sincerely hope that the foregoing has served to update your knowledge in the case of Mr. O'Rourke and to illustrate my concern over the dangerous activities that he has been involved with on behalf of the Irish Republican Army. In view of his criminal record, his misrepresentations, and the extensive due process accorded by the various levels of administrative and judicial review, INS is prepared to carry out the terms of the Second Circuit order and deport Mr. O'Rourke should the Supreme Court deny certiorari. I have previously indicated to you that, as a matter of courtesy, I will give you at least seven days notice of any scheduled deportation. This letter constitutes such notice. The decision set forth herein has been reviewed and approved by Acting Deputy Attorney General Jensen and by Attorney General Smith.

Sincerely,

Alan C. Nelson

Alan C. Nelson
Commissioner

CC: ATTORNEY GENERAL SMITH
ACTING DEPUTY ATTORNEY GENERAL JENSEN
CHAIRMAN SIMPSON, SENATE SUBCOMMITTEE
ON IMMIGRATION AND REFUGEE POLICY
CHAIRMAN MAZZOLI, HOUSE SUBCOMMITTEE
ON IMMIGRATION, REFUGEES AND INTERNATIONAL LAW

CC: OFFICE OF LEGISLATIVE AFFAIRS, DEPARTMENT OF JUSTICE
For your information. Your Control No. C-432 and

CC: ~~GENERAL COUNSEL - O'Rourke file~~
Attention: Craig Reynolds

O'ROURKE v. WARDEN, METROPOLITAN CORRECTION CENTER 1131

Cite as 539 F.Supp. 1131 (1982)

VIII.

[11-13] Petitioners finally contend that the trial judge abused his discretion in refusing to grant a motion to sever their trials from that of Logan. A motion to sever criminal trials rests within the sound discretion of the trial judge. The mere fact that co-defendants may attempt to blame each other does not require a severance. *United States v. Vinson*, 606 F.2d 149 (6th Cir. 1979), cert. den. 444 U.S. 1074, 100 S.Ct. 1020, 62 L.Ed.2d 756; *Thompson v. United States*, 445 U.S. 904, 100 S.Ct. 1080, 63 L.Ed.2d 319 (1980). The joint trials of petitioners and Logan was consistent with the general rule that persons charged with a conspiracy should be tried together, particularly where the proof of charges against all defendants is based upon the same evidence and acts. *United States v. Boyd*, 610 F.2d 521 (7th Cir. 1979). The mere fact that there is hostility amongst the defenses of the defendants or that one defendant may try to save himself at the expense of another is not sufficient ground to require separate trials.

IT IS THEREFORE ORDERED that petitioners' request for habeas corpus relief be and it hereby is denied.

IT IS FURTHER ORDERED that judgment be entered in favor of the respondents.

IT IS SO ORDERED.



Michael O'ROURKE, Petitioner,

v.

WARDEN, METROPOLITAN CORRECTION CENTER, Respondent.

No. 81 Civ. 4369 (MEL).

United States District Court,
S. D. New York.

May 24, 1982.

Alien filed petition for writ of habeas corpus alleging that he was being unlawfully

held without bail pending resolution of his deportation proceeding. The District Court, Lasker, J., held that evidence that alien had been a member of the Irish Republican Army, had been a terrorist, had escaped from prison in Ireland, and faced a possible life sentence if he were returned to Ireland was a sufficient basis for Board of Immigration Appeals' determination denying alien bail pending resolution of his deportation proceeding.

Petition denied.

1. Habeas Corpus ⇐92(1)

In habeas corpus proceeding in which petitioner alleges that he is being unlawfully held without bail pending resolution of deportation proceedings, district court's scope of review is limited to determination of whether agency's decision is supported by, or has reasonable foundation in, the record. Immigration and Nationality Act, § 242(a) as amended 8 U.S.C.A. § 1252(a).

2. Aliens ⇐53.8

Government has constitutional authority to detain alien if there is reasonable cause to believe that he may flee rather than face deportation.

3. Aliens ⇐53.9

Evidence that alien had been a member of the Irish Republican Army, had been a terrorist, had escaped from prison in Ireland, and faced a possible life sentence if he were returned to Ireland was a sufficient basis for Board of Immigration Appeals' determination denying alien bail pending resolution of his deportation proceeding. Immigration and Nationality Act, § 242(a) as amended 8 U.S.C.A. § 1252(a).

Charles A. Glackin, New York City, for petitioner; Willard H. Myers, III, Wasserman, Orlow, Ginsberg & Rubin, Philadelphia, Pa., of counsel.

John S. Martin, Jr., U. S. Atty., S. D. N. Y., New York City, for respondent; Jane E.

Bloom, Asst. U. S. Atty., New York City, of counsel.

LASKER, District Judge.

Michael O'Rourke petitions for a writ of habeas corpus on the ground that he is being unlawfully held without bail pending resolution of his deportation proceedings.

I.

O'Rourke was arrested by agents of the Immigration and Naturalization Service ("INS") early in November, 1979, on charges of being a deportable alien because of illegal entry under 8 U.S.C. § 1251(a)(2). The District Director of the INS, pursuant to 8 U.S.C. § 1252(a), decided that O'Rourke should be held in custody pending final determination of deportability. O'Rourke then applied to Immigration Judge Nathan W. Gordon for bail and his application was denied on November 7, 1979, on the representations of the INS that O'Rourke is a member of the Irish Republican Army ("I.R.A."), that he is a terrorist, and that he had escaped from an Irish prison. (Administrative Record at 3). O'Rourke then appealed to the Board of Immigration Appeals ("BIA"), which remanded the case because there had been no substantiation of the INS assertions about O'Rourke. At the hearing on remand, the INS presented evidence to show that O'Rourke had been convicted in Ireland of possessing explosives and had been sentenced to terms of imprisonment of two years and six years, to run concurrently; that while serving that sentence, O'Rourke and two fellow I. R. A. members escaped from prison by exploding a bomb in a court holding pen in which they were waiting to testify at a trial; and that he faces a possible sentence of life imprisonment from charges arising out of the escape. Asserting his rights under the Fifth Amendment, O'Rourke refused to answer any questions at the hearing. O'Rourke's application for bail was again denied on the basis that he presented a risk of flight. On appeal, the BIA affirmed the decision denying O'Rourke bail.

Soon afterward, on July 17, 1980, it was determined in the separate deportation proceedings that O'Rourke was deportable on the INS' amended charge that he had overstayed his visa. O'Rourke then filed for an "adjustment of status" under 8 U.S.C. § 1255 on the basis of his common-law marriage to an American citizen. In support of his application, O'Rourke argued that he had committed no crimes in the United States and that his I. R. A. activities did not render him excludable because those activities constituted political, rather than common, crimes.

Subsequently, in July, 1980, O'Rourke moved the BIA for reconsideration of its earlier denial of bail. On this occasion, he waived his Fifth Amendment privilege and submitted his own extensive affidavit in which he described how he came to be involved with the I. R. A., his strong conviction that the British presence in Ireland was wrong and oppressive, and the activities leading up to his convictions in Ireland.

According to O'Rourke, he joined the I. R. A. in the summer of 1971, the culmination of a gradually increasing dedication to the cause of the I. R. A. He describes the experience of I. R. A. membership as being "no different than any other Army training." (Administrative Record at 270). He was trained in weapons and explosives use, drilling, and other aspects of soldiering. At the conclusion of his training, he became a regular I. R. A. member and was assigned as an Engineering Officer to work at Army Headquarters, where he was involved in the research, development and manufacture of weapons, explosives, rockets, and mortars for use by I. R. A. troops until his arrest in August, 1975. O'Rourke states that he learned immediately after his arrest that his father had also been arrested and that he was questioned and asked to give a statement, which he refused until the authorities told him that since explosives were found at his home, on his father's property, his father would be charged and sentenced. He claims that he was also told that because of his age, his father would die in prison and that he was told that if he

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Cite as 539 F.Supp. 1131 (1982)

signed a confession, his father would be freed, and if he did not his father would be charged. He states that his requests for the assistance of counsel were denied and that he eventually signed a confession, and his father was released.

Upon sentence, O'Rourke was imprisoned in the Port Laoise Jail which he describes as a special place of detention for those convicted of I. R. A. activities. As O'Rourke describes the division of authority in the jail, the I. R. A. prisoners were specially treated as political prisoners or prisoners of war rather than as criminals. They were not required to work, were permitted to wear their own clothes, enjoyed free association within the prison and elected their own officers to whom the governmental authorities directed communications; they were allowed unlimited mail and visits, food parcels, radios and other goods from the outside, and simply upon the word of another I. R. A. prisoner assuring return, received unescorted parole to visit death beds or funerals of immediate relatives. The prisoners' daily regime consisted of military drills, Gaelic language courses, guerilla warfare classes, and political discussion sessions, all organized and supervised according to the I. R. A. hierarchy. The prison staff, according to O'Rourke, did not discipline any I. R. A. member: discipline was carried out within the I. R. A. organization itself, and the only function of the prison staff was to prevent escape.

In June of 1976, O'Rourke asserts, he was directed by senior I. R. A. officers to participate in an escape, to be made from a courthouse holding cell. In preparation for the escape, O'Rourke made a small diversionary bomb to distract attention from the larger bombing of the cell's wall through which the escape would occur. He states that he threw the small bomb out of the cell and it landed near a guard who did not see it, and that he yelled to the guard to move away from the bomb, who moved in time to escape injury. Subsequently, the guards fled and O'Rourke and his comrades escaped after opening the cell door with another bomb. According to O'Rourke, he returned to service with the I. R. A. after

his escape, until he learned from I. R. A. intelligence sources that the government was planning to kill him because they believed that he was involved in the death of a British ambassador.

At that point, O'Rourke states, he was instructed to obtain a passport and visa under a fictitious name and to go to the United States. He did so. Once in the United States, he settled in Philadelphia where he made contacts in the Irish community and secured employment doing contracting work. Soon thereafter, he met Margaret Lieb and they fell in love. They wished to get married, but O'Rourke did not want to marry under a fictitious name, so they performed a ceremony themselves in the hope and belief that their action constituted a legal marriage under Pennsylvania common law.

In October, 1979, O'Rourke asserts, he began to hear from friends that the FBI was looking for him and had learned his assumed name and true identity. He decided not to run, but to wait and he was arrested on October 30, 1979.

O'Rourke explained his silence in the earlier bail proceedings on the ground that, at the time of his arrest, the agents told his attorney that they believed that he could provide information about a suspected plot to assassinate British Prime Minister Thatcher and Irish Prime Minister Lynch when they visited the United States as well as on the fact that the Assistant United States Attorney had stated that O'Rourke was believed to have been involved in the murder of the late Lord Mountbatten. Because he had believed that he was the subject of criminal investigations, he refused to answer questions at earlier proceedings until his attorneys determined that the United States government would not prosecute him for any reason, including his alleged illegal entry. In addition, O'Rourke states that since his entry into the United States, he has not been involved in I. R. A. activities, and is deemed to have resigned from the I. R. A., and that his devotion to his wife would assure his not leaving the jurisdiction

before the deportation proceedings are concluded. He states that he wishes to pursue all legal opportunities to gain permanent residence in the United States and asserts that he could have designated countries other than Northern Ireland to which to be deported but has not done so because he wishes to remain in the United States.

In addition to O'Rourke's own affidavit, he presented to the BIA the affidavits of some fifty persons who know him in Philadelphia and who attested to his good character and their belief that he would not flee.

In August, 1980, the BIA denied O'Rourke's motion for reconsideration on the grounds of his admitted participation in I. R. A. activities and the pending charges against him, which the BIA found to create a substantial risk that O'Rourke would flee rather than await the outcome of deportation proceedings which could result in his deportation to Ireland to face possible life imprisonment. The BIA essentially disregarded the "character" affidavits which he submitted, because the affiants were shown to know him only under an assumed name and therefore, according to the BIA, their opinions of him were not entitled to great weight. Moreover, the BIA found the argument as to the importance of O'Rourke's marriage to be unpersuasive because its validity had not been determined. They gave his assertion that he would be able to designate other countries for deportation no weight because it had not been established that he would in fact be able to designate other countries which would be willing to receive him.

Two of the five members of the BIA dissented. They emphasized that O'Rourke had demonstrated close community ties in Philadelphia and close family ties because of his marriage. The dissenters criticized the majority's failure to credit the many affidavits which had been submitted, pointing out that the affidavits had been submitted after the affiants had learned O'Rourke's true identity. The dissenters also expressed concern that O'Rourke had already, by that time, been detained for

nine months and that further proceedings were likely to consume many more months as O'Rourke pursued avenues of relief from deportation. The dissenters concluded that O'Rourke should be released on a \$50,000 bond.

In May, 1981, O'Rourke again moved for reconsideration of the BIA's decision, this time on the basis that his marriage had been determined to be valid and that his application for a visa had been approved. He also stressed the length of time he had been detained to date and the fact that the proceedings were likely to extend many months into the future since either side would appeal a decision on the pending adjustment of status proceeding.

Before the BIA ruled on that application, Administrative Judge Hupp, who had been presiding over the adjustment of status proceeding, recused himself, stating that he believed that he had been harassed by the INS in connection with the O'Rourke case. O'Rourke then submitted supplemental papers to the BIA, contending that the INS had been acting in bad faith and was guilty of misconduct in ordering an investigation of Judge Hupp to influence his decision in the O'Rourke case. According to O'Rourke, Judge Hupp had indicated during the course of the proceedings before him that he was sympathetic to O'Rourke's application, in particular by ruling that O'Rourke's activities in Ireland were irrelevant to the issue of adjustment of status. O'Rourke also contended that Judge Hupp's recusal would cause substantial further delay since a new administrative judge would need to begin the adjustment of status proceedings from scratch. The INS submitted evidence that the investigation of Judge Hupp was not related to his presiding over the O'Rourke matter and argued that the risk of flight was still great since the adjustment of status for which O'Rourke was applying was a form of discretionary relief which O'Rourke was unlikely to receive because of his criminal background.

The BIA denied O'Rourke's application on the ground that there had been no significant change in circumstances since its last

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ruling. It concluded that the fact of O'Rourke's marriage was outweighed by the adverse factors creating a risk of flight, that the INS was not guilty of intentionally delaying the deportation proceedings, and that there was no evidence that the investigation of Judge Hupp was related to his presiding over O'Rourke's case, nor that Judge Hupp had intended to grant O'Rourke the relief requested. One Board member dissented, contending primarily that release was warranted in light of the length of detention.

In July, 1981, O'Rourke filed his habeas petition in this case. Originally he had sought to have the new adjustment of status hearing enjoined on the ground of procedural irregularities relating to Judge Hupp's recusal and the choice of a new administrative judge, in addition to seeking relief from the denial of bail. Since that time, however, he has revised his petition limiting it to the issue of the denial of bail. The delay in determining this matter has been caused in substantial part by O'Rourke's counsel's desire to submit further material, the last item of which was filed in early 1982. The application for adjustment of status has yet to be determined, although we are informed by the parties that all the evidence has been presented.

II.

[1] Section 242(a) of the Immigration and Nationality Act of 1952, 8 U.S.C. § 1252(a), provides:

"Pending a determination of deportability in the case of any alien as provided in subsection (b) of this section, such alien may, upon warrant of the Attorney General, be arrested and taken into custody. Any such alien taken into custody may, in the discretion of the Attorney General and pending such final determination of deportability, (1) be continued in custody; or (2) be released under bond in the amount of not less than \$500 with security approved by the Attorney General, containing such conditions as the Attorney General may prescribe; or (3) be

released on conditional parole. But such bond or parole, whether heretofore or hereafter authorized, may be revoked at any time by the Attorney General, in his discretion, and the alien may be returned to custody under the warrant which initiated the proceedings against him and detained until final determination of his deportability. Any court of competent jurisdiction shall have authority to review or revise any determination of the Attorney General concerning detention, release on bond, or parole pending final decision of deportability upon a conclusive showing in habeas corpus proceedings that the Attorney General is not proceeding with such reasonable dispatch as may be warranted by the particular facts and circumstances in the case of any alien to determine deportability."

The Attorney General has delegated virtually all his powers under § 242(a) to the Board of Immigration Appeals. See 8 C.F.R. § 3.1(d). See also *United States ex rel. Barbour v. District Attorney*, 491 F.2d 573, 577 n.4 (5th Cir.), cert. denied, 419 U.S. 873, 95 S.Ct. 135, 42 L.Ed.2d 113 (1974). The BIA, in turn, has construed § 242(a) to provide that the determination to release an alien pending deportation proceedings is "not a discretionary form of relief" but rather "an alien should be detained or required to post a bond, only if he is a threat to national security or is a poor bail risk," *Matter of O'Rourke*, A22 607 396, Decision and Order of the BIA, August 13, 1980, at p. 3, citing *Matter of Patel*, 15 I & N Dec. 666 (BIA 1976). The court's scope of review on habeas corpus is limited to the determination whether the agency's decision is supported by, or has reasonable foundation in, the record. *United States ex rel. Belfrage v. Shaughnessy*, 212 F.2d 128, 129 (2d Cir. 1954); *United States ex rel. Barbour v. District Director*, supra at 578. See also *Stevic v. Sava*, 678 F.2d 401, 404 (2d Cir. 1982).

The sole ground presently asserted by the BIA for denying O'Rourke bail is that O'Rourke is a poor bail risk. In assessing

the risk of flight posed by an alien held for deportation proceedings, the BIA has held that its inquiry is essentially the same as that required under the Bail Reform Act, 18 U.S.C. § 3146, *Matter of San Martin*, 15 I & N Dec. 167, 168 n. 1 (BIA 1974), and has enumerated factors to be considered in the decision, including 1) family ties in the United States, 2) employment history, 3) community roots and ties in the United States, 4) length of time in the United States, 5) availability of relief from deportation, 6) length of time for completion of deportation proceedings, 7) criminal record within or without the United States, 8) prior history of immigration violations and 9) manner of entry into the United States and 10) record of appearance at court proceedings.

O'Rourke contends that the BIA did not properly weigh the factors in his case. He notes that the BIA accorded virtually no weight to the close family ties reflected by his marriage and argues that the BIA disingenuously dismissed his numerous affidavits establishing his community ties on the ground that the persons knew O'Rourke under his assumed name. O'Rourke contends that such a reasoning is fallacious because, at the time the affidavits were executed, the affiants did know his actual identity and stated so within the affidavits. Furthermore, O'Rourke argues that the BIA failed to consider his employment history, his length of stay in the United States, or his possible applications for relief from deportation, such as through adjustment of status or asylum. Moreover, O'Rourke contends that although the BIA's decision of August 13, 1980, mentioned concern over the length of time that he had already been incarcerated, and the dissenters at that time suggested release in light of the likely time of incarceration, the latest decision of the BIA fails even to mention this factor. O'Rourke notes additionally that he has no history of violation of immigration laws and that his manner of entry has not been mentioned as a basis for denying bail in any of the BIA decisions.

O'Rourke concludes that, since the above factors generally favor granting bail, the

sole basis for the decision to deny bail was his criminal record and the pending charges in Ireland. While conceding that a pending criminal proceeding or a record of criminal convictions are valid factors to be considered in a bail determination to secure a person's presence at a deportation proceeding, O'Rourke strenuously argues that his crimes in Ireland may not be considered in bail proceedings because they were "political" rather than common crimes as those categories are distinguished in various treaties between the United States and other countries. See generally 18 U.S.C. § 3181; 6 Whiteman, *Digest of International Law*, 799-857 (1968); Cantrell, *The Political Offense Exemption in International Extradition: A Comparison of the United States, Great Britain and the Republic of Ireland*, 60 Marquette L.Rev. 77 (1977). Specifically, O'Rourke relies on the provision of the Refugee Act of 1980, 8 U.S.C. § 1253(h) which bars deportation to a country "if the Attorney General determines that such alien's life or freedom would be threatened in such country on account of race, religion, nationality, membership in a particular social group, or political opinion . . ." According to O'Rourke, the differentiation in that act between "a serious non-political crime" and other crimes is intended to incorporate the traditional distinction between political and nonpolitical crimes reflected in extradition treaties. O'Rourke contends that he should not be denied bail on the basis of crimes which are political in nature since he could not ultimately be deported to answer for those crimes.

The government responds that O'Rourke was properly found to be a poor bail risk in light of the fact that he faces a possible sentence of life imprisonment for his escape if he is returned to Ireland and that he also would be required to complete the sentence he was serving when he escaped. In addition, the government contends that O'Rourke's record of employment was unstable, his family ties in the United States consisted solely of his marriage, and the members of the Philadelphia community attesting to his good character knew him un-

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der an assumed name. Accordingly, the government argues that the BIA properly gave these factors little weight. Finally, the government maintains that the issue whether O'Rourke's crimes were political crimes is pending in the adjustment of status proceeding and should not be determined in this forum.

III.

This case reflects the dilemma posed by the combination of three circumstances. First, human conduct cannot be predicted with reasonable certainty. Second, existing procedures for determining the legality of deportation decisions and for determining the availability of relief from those decisions are complex and lengthy. Third, there is no available mechanism for ensuring the availability of persons who may be determined to be subject to deportation and are found to be poor bail risks other than to keep them incarcerated.

Michael O'Rourke presently suffers the consequences of this dilemma. Although he has not been charged with, much less convicted of, any crime in the United States, he has spent some two and one-half years in the type of incarceration ordinarily utilized for those awaiting trial on criminal charges. Unlike a pre-trial detainee, however, there is no requirement for one in O'Rourke's circumstances that the civil charges against him be speedily determined. Indeed, it has been held by the BIA, and we have no reason to question the decision, that the government has been guilty of no intentional delay of the O'Rourke proceedings. Furthermore, since it is reasonably clear from the record that both the government and O'Rourke intend to appeal any unfavorable decision, the proceedings may last for an additional substantial period of time. Thus, O'Rourke may eventually spend over three years in detention before his deportability to Ireland is finally determined and all procedures for relief are exhausted.

This lengthy incarceration must cause concern in any community accepting the basic concept that a person ought not be required to suffer essentially criminal pen-

alties when he or she has not been determined to be, or charged with being, criminally liable by the detaining authorities. In this regard, O'Rourke's detention is all the more troublesome because he is being held for deportation, not extradition.

[2] Nevertheless, there is no question that the government has the constitutional authority to detain O'Rourke if there is reasonable cause to believe that he may flee rather than face deportation. Moreover, our scope of review of the BIA's decision is limited to the single issue whether the BIA's determination has a reasonable foundation in the record. We conclude that it does.

[3] The overriding factor supporting the BIA's determination that O'Rourke poses a substantial risk of flight is O'Rourke's admitted escape from prison in Ireland and the possible life sentence to which he is subject should he be returned to Ireland. His prior escape demonstrates that he is willing to utilize illegal, even violent, means to avoid serving his sentence in an Irish prison. Since one of the possible consequences of a determination that he is deportable to Ireland would be a resumption of his Irish prison sentence, and indeed the imposition of a longer sentence, it was not unreasonable for the BIA to conclude that O'Rourke may similarly avoid a return to Ireland by avoiding the American legal process.

This does not mean he would do so. We have been impressed by the sincerity of his own affidavit, and that of his wife, and we recognize that the offenses he has committed were in the service of a cause in which he and many others devoutly believe, and that this may distinguish his past history from what his behavior would be in the United States. Under present circumstances, however, on this application, the question is not what our opinion might have been as a member of the BIA, but instead to determine whether there was a reasonable foundation in the record for the decision actually reached by the BIA.

O'Rourke's argument that his offenses in Northern Ireland may not be utilized to determine if he is a poor bail risk because they were political crimes misconceives the relevance of his convictions and pending charges to the determination of bail. O'Rourke's argument assumes that the Irish criminal record was used to determine his moral character or his trustworthiness. If such were the case, it would surely be relevant that O'Rourke's crimes were not the crimes of a petty criminal, but rather the crimes of one believing that he was fighting in a war of national liberation. However, the relevance of O'Rourke's criminal record is to the possible adverse consequences to which he would be subject if he is unsuccessful in the pending deportation proceedings. Given the impossibility of determining the intentions of one in O'Rourke's position, one must rely on inferences from human nature, the known facts about O'Rourke, his past conduct, and his possible motivations for avoiding deportation. The sentence to which he would be subject in Ireland is certainly an objective basis upon which to infer a risk of flight from deportation proceedings.

This is not to say, however, that the possible political nature of O'Rourke's crimes is totally irrelevant to the determination of bail. While, as noted above, the possible adverse consequences attaching to a decision to deport O'Rourke to Ireland are relevant to the risk of flight, the possibility that he may not be deported to Ireland is also relevant, just as in the analogous setting the strength or weakness of the prosecution's case is considered in determining bail for a pre-trial detainee. To the extent that O'Rourke's arguments that his crimes were political may tend to support his position that he may not be deported, and at the least may not be deported to Ireland, they weaken the foundation for assuming that O'Rourke faces likelihood of deportation to Ireland and consequently that he faces a possible life sentence at the conclusion of the deportation proceedings. It is worth noting in this regard that the recent decisions in *In re Mackin*, 80 Cr. Ms. 1, P. 54 (S.D.N.Y. August 13, 1981), that an I. R. A.

member had committed only political offenses and therefore was not subject to extradition, and in *Stevic v. Sava*, *supra*, determining that the Refugee Act of 1980 relaxed the standard for determining when an alien is a political refugee, at least indirectly add weight to O'Rourke's position. In light of these developments, O'Rourke may wish to move for reconsideration of the BIA's decision denying him bail. The point is that the primary relevance of O'Rourke's arguments as to the political nature of his crimes is to his entitlement not to be deported. The arguments are relevant to the bail determination only to the extent that they demonstrate the strength of O'Rourke's defenses against deportation.

In sum, while we tend to agree with O'Rourke that his evidence of ties in the community and of his marriage and conduct in the United States may have been given less weight than it deserved, and while we may have given other favorable evidence greater weight were the decision ours to make, we do not agree that, in light of that evidence, there was an insufficient basis to deny O'Rourke's release. The BIA was entitled to place greater emphasis on the adverse consequences which O'Rourke might suffer if it is determined that he is deportable to Northern Ireland and to O'Rourke's past conduct in avoiding imprisonment than to the evidence of family and community ties in the United States. It is clear from the record that the BIA found these unfavorable factors to be of overriding significance, and in these circumstances such a determination cannot be said to lack reasonable foundation.

O'Rourke's petition for a writ of habeas corpus is denied. Certificate of probable cause pursuant to F.R.A.P. 22(b) is granted.

It is so ordered.



August 1983
(revised)

IRISH TERRORISM AND OVERSEAS REVOLUTIONARIES

The Provisional IRA's claim to be the champion of Irish nationalism is accepted by many Americans of Irish origin, from whom it derives considerable support, financial and otherwise, and by members of the smaller expatriate Irish communities in such countries as Australia and Canada. Elsewhere, however, support comes largely from extremists - Communists, Trotskyists and other anti-Western groups, a fact which the Provisionals are careful not to publicise in North America. Sympathy for their cause is also a recurring theme in Soviet propaganda (though their violence is criticised); again the Provisionals, in talking to Western audiences, play down this source of support.

The main importance of the Provisionals' overseas links is propagandist. Irish terrorists like to present themselves as leading a genuine "national liberation movement" by means with which many outsiders sympathise. However, they are not always successful in obscuring the true nature of their movement. A bulletin published by the US State Department Bureau of Public Affairs commented in September 1982:

"Although the Provisional Irish Republican Army (PIRA) is primarily a domestic terrorist group that conducts operations in Northern Ireland, US records show that the PIRA and its sympathisers have conducted more international terrorism than any other group. The PIRA has launched attacks from several countries, and the attacks have involved citizens from at least 15 countries, although the majority were against British nationals."

A US newspaper reported in December 1982 that many of the posters on the walls of the Belfast headquarters of Provisional Sinn Fein, PIRA's political arm,

"feature various guerrillas from different leftist movements, all with rifles or machine guns raised high. Sinn Fein's expressions of solidarity include the PLO, the Basques, and more recently, the radical feminists, all united by various Marxist slogans.

"The truth is that the IRA serves the Irish people as the American Mafia serves the Italians - primarily by producing more corpses.... One of the most positive things that could happen is for Americans sympathetic to Catholics in the north to stop viewing the IRA as the latter's representatives; it has no honest claim to the title. Whatever credibility the IRA possesses, it has acquired by default." (National Catholic Register (Los Angeles), 5 December 1982).

The Provisionals are usually reticent about their underlying aim - the establishment of a neutral and "socialist" united Ireland. It is significant that for domestic consumption in Ireland the old formula - "a democratic socialist Ireland" has recently been shortened to "socialist", the word "democratic" being dropped. Outside Ireland, however, Provisional spokesmen prefer to avoid any mention of "socialism". As the former Provisional activist Maria McGuire explained in her book, *To Take Arms, a Year in the Provisional IRA* (1978), they refer only to the "martyrs of 1916 and 1920-22" and exploit anti-British sentiment. The former MP, Owen Carron, stated in Manchester in February 1983 that the aim of the Republican movement was "a 32 county unified Socialist Republic" ... "we need to intervene to destabilise the South" (Irish News, Belfast, 28 February 1983); he subsequently denied saying this, but it was confirmed by the journalists present. An unnamed IRA "Commanding Officer" was equally frank in an interview with the English-language Mexican newspaper,

This paper has been prepared by the Foreign and Commonwealth Office in conjunction with the Northern Ireland Office for general briefing purposes.

The News (12 October 1981): the next step after a British withdrawal from Northern Ireland would be to dismantle the structure of the "so-called Free State"; the Irish Republic was "no more than a self-governing annex of rich men's dubious neo-colonialism". Or as the Provisional Sinn Fein leader, Ruairi O'Bradaigh, asserted in an interview with the Italian weekly magazine L'Espresso (2 August 1981): "We want an Ireland which is neutral and socialist".

International activities

The Provisionals' propaganda makes much of the presence of Sinn Fein leaders at international meetings, particularly in the Third World. Their participation in such conferences, however, more often follows a request from them than an invitation from the organisers. In January 1981 the Non-Aligned Movement's Coordinating Bureau rejected an IRA application to participate with observer status at the NAM Foreign Ministers' meeting the following month in New Delhi. Conferences attended by the Provisionals include:

- An "International Congress of National Liberation Organisations and Movements", August 1982, organised by the National Committees of Corsica and attended by representatives of Basque, Catalan, Galician, Kurdish and Eritrean groups.
- Second International Congress of the League for the Rights and Liberation of Peoples, Rome, June 1982, addressed by Ruairi O'Bradaigh and delegates from the Nicaraguan and Algerian Governments and liberation groups in El Salvador and East Timor, and Palestinian groups.

The Workers' Party (originally Official Sinn Fein) and the Communist Party of Ireland are the usual contacts of the Communist international front organisations, although the Provisionals have also had some direct contacts with these organisations - which comment freely on Irish affairs. The World Peace Council issued a statement from its Helsinki headquarters in May 1981 (at the time of the death of the hunger striker, Bobby Sands) condemning Britain's "continuing military oppression and violation of human rights" in Northern Ireland. The International Union of Students, based in Prague, has been linked with the Irish and British students' unions in a "Peace, Jobs and Progress" campaign in Northern Ireland and undertook a "solidarity tour" of Northern Ireland in May 1980. The World Federation of Trade Unions (WFTU) also based in Prague, issued a statement on 6 November 1980, during the first hunger strike, backing the prisoners' five demands; its newspaper, Voice, translated these five demands and a related National H-Block Committee leaflet into 10 languages, and, in January 1981, WFTU belatedly published a letter from certain H-Block strikers, concluding: "I exhort you all in the words of Marx, 'Workers of the World Unite', unite and help smash England's Hell-Blocks". The World Federation of Democratic Youth, based in Budapest, promoted a "Round-Table Conference on Ireland" in Dublin in February 1981 in conjunction with the British Young Communist League and the Irish Connolly Youth Association (the youth organisation of the Communist Party of Ireland).

USSR and Eastern Europe

In October 1971 weapons and ammunition purchased from the Omnipol arms factory in Czechoslovakia by Irish terrorists were intercepted at Amsterdam. Since then arms of East European origin, including RPG 7 rocket-launchers (a Soviet-designed weapon made in Bulgaria), have been discovered in Northern Ireland, possibly as a result of arms deals negotiated in the Middle East. A large consignment of arms of East European origin, including Kalashnikov rifles, supplied by Palestinians in Lebanon and bound for Dublin, was discovered in November 1977 in Antwerp.

Soviet propaganda, supported particularly by the Czechoslovak and East German Press, consistently presents events in Northern Ireland as a popular uprising by an oppressed "colonial" community against "British imperialism" (the press in Poland, Hungary and Rumania tends to be more objective). Soviet comment ascribes sectarian divisions to a supposed British policy of "divide and rule"; the British authorities are said to allow Unionist extremists a free hand; security measures against "Loyalist" paramilitary organisations are almost

totally ignored. In February 1983, for instance, the Soviet government newspaper, Izvestia, claimed that shooting at "living targets" had become "a common occupation of the British Tommies" and that Protestant extremists had "unleashed real genocide against the Catholic population of the country". Moscow Radio claimed that Sinn Fein had won a "landslide victory" in the Northern Ireland Assembly election in October 1982 (in fact five Sinn Fein candidates were elected to an Assembly of 78). Nevertheless, a commentary by the official Soviet news agency TASS in March 1983 alleged that the British Government had "abandoned the search for ways of achieving political normalisation for the problems of Ulster" and was trying to "preserve colonial practices there by intensifying terror and repression".

The Palestinians

The Provisionals like to depict themselves as a "national liberation movement" with strong Third World support. An Phoblacht (14 April 1983), announced a new edition of the Republican publication, Revolutionary Notes:

"Besides making up for the obvious omission of Karl Marx from the first one, [it] draws on such other revolutionary thinkers and doers as Frantz Fanon, particularly in regard to colonialism; the Algerian, Bashir Hadji Ali, Vietnam's Giap and Le Duan; and a variety of others including Nelson Mandela, Camillo Torres and Fidel Castro.... Each quotation, even the most familiar, is thought-provoking, and the relevance of a hundred-year-old thought, or an experience in another land, to Ireland today is striking."

The Provisionals have warmly espoused the Palestinians' cause. Ruairi O'Bradaigh, in his presidential address to the Sinn Fein ard fheis in October 1982, recorded Sinn Fein's

"solidarity with the gallant Palestinian people and their Lebanese allies who have suffered such an appalling holocaust in recent months at the hands of those who have driven them out and would deny them their homeland and self-determination as a people." (An Phoblacht, 4 November 1982)

After the Israeli forces entered the Lebanon, criticism was directed against the United States:

"The Zionists, backed by the United States, have always declared as their aim the elimination of the Palestinians and their expression of separatism, the Palestine Liberation Organisation.... It is the US who blocked nearly every move by the United Nations to remove the Zionists from Lebanon.... This latest onslaught against the Palestinians will neither be forgotten nor forgiven." (An Phoblacht, 23 September 1982).

The PLO themselves reject the Provisionals' claims to affinity with them. Yasser Arafat denied in an interview with Al Fajr (United Arab Emirates) in early November 1979 that there was "any connexion" between the PLO and the Provisional IRA. In August 1982 reports that an outspoken Palestinian who attended a Belfast Republican rally was a PLO representative were denied by the PLO representative in London who emphasised that "there was no PLO representative in Belfast nor any Palestinian with official status. The PLO has no links with the IRA". (The woman in question, who was not even a Palestinian, belongs to a London-based Trotskyist-influenced "Palestinian Solidarity Organisation".)

Active Provisional links with radical Palestinian groups in the arms procurement context have diminished since the 1970s. In August 1981 when two Provisionals were detained in France on passport charges after arriving from Beirut, the IRA's Republican Press Centre maintained that both men were members of the Sinn Fein Foreign Affairs Bureau who had been "campaigning on behalf of the Maze Prison hunger strikers". But no evidence of recent active PLO/IRA links has emerged despite the mass of papers captured by the Israelis in Lebanon in 1982.

Libya

Irish terrorist contacts with Libya have fluctuated. In the early 1970s there was evidence of support: in March 1973 the Irish Navy intercepted the Cypriot vessel Claudia and detained six Irishmen, including Joe Cahill, a Provisional leader. The arms, mainly of Soviet origin, had been loaded on board in Tripoli by Libyan soldiers.

Subsequent Libyan attitudes to Irish extremism have been equivocal, often reflecting the current state of Anglo-Libyan relations. In 1979, after the conviction in Dublin of Thomas McMahon for his part in the murder of Lord Mountbatten, unconfirmed Press reports said that McMahon had gone to Libya in 1975 for training in the use of explosives. In April 1975 an Irish parliamentary delegation reported on its return from Libya that the Libyan authorities had undertaken that in future "no aid would be given to any illegal organisation in Ireland".

By 1980, however, Libyan broadcasts again began to refer to "aid" to Ireland. At a press conference in Tripoli on 15 March 1981, Libyan leader Colonel Qadhafi said "the people [of Ireland] have been occupied by Britain and they are struggling to restore their independence", but added that Libya supported the just cause of the Irish with moral, not material, aid (The News Line, daily newspaper of the [Trotskyist] Workers Revolutionary Party, London, 16 March 1981). Later in 1981, at the time of the Republican hunger strikes, Qadhafi sent a letter to the UN Secretary-General criticising the British "code of conduct" in Ireland.

In August 1982, after the Falklands conflict (in which Libya strongly supported Argentina), there were further indications of anti-British attitudes. The Libyan press reported a speech by David O'Connell (described as a "leader of the IRA") referring to war against "British colonialism" and it spoke of the IRA as "freedom fighters struggling against the British military presence".

Latin America

The Provisionals have been trying to extend their contacts in South and Central America. Martin McGuinness, interviewed on US television in March 1983, said that "our heroes are all the people who fight for national liberation", for example those of El Salvador, Nicaragua, Vietnam and Cuba. But this appears to reflect little more than revolutionary solidarity.

In 1981, Juan Perez of the Argentine Workers Revolutionary Party (PRT/ERP) attended the Provisional Sinn Fein ard fheis and the extremist Chilean MIR sent a message of support. In March 1982 An Phoblacht reported that Sinn Fein had sent a message of support to the New Jewel Movement in Grenada describing it as "an inspiration to those struggling for national liberation and to those who fight against all types of oppression throughout the world". In September An Phoblacht reported that Sinn Fein's Foreign Affairs Bureau had sent "revolutionary and solidarity greetings to our struggling Chilean brothers".

In January 1982 Provisional Sinn Fein issued a statement of solidarity with the rebels in El Salvador: "we unreservedly condemn United States support for the genocidal military junta and pledge our continued support for the struggling people of El Salvador". In December 1982 An Phoblacht printed an "exclusive" interview with a leader of the Farabundo Marti National Liberation Front (FMLN): a photograph caption asserted that the "moral weakness of the El Salvador Army has been exposed by the FMLN's October offensive".

According to the Irish Press (Dublin) in December 1982, an Irish voluntary worker was told by a member of the El Salvadorean Government that the IRA were "training revolutionaries" there. A Mexican report in March 1983 quoted an El Salvadorean colonel as saying that "one hundred members of the IRA" were fighting with the FMLN. Neither story has been corroborated.

In June 1982 An Phoblacht reported an interview in Washington with a young Nicaraguan allegedly captured while fighting with the FMLN in El Salvador. He indicated his "willingness and readiness" to fight with the IRA, saying "we are

the same people, we are in the same struggle, we are the same revolutionary army, we are of the same cause, we are the same in being revolutionaries".

Cuba

Kieran Nugent, a former "protesting prisoner" at the Maze prison near Belfast met representatives of the Cuban Embassy in Copenhagen during a publicity tour in Denmark in April 1981. In September 1981 President Castro, speaking at the formal opening of the Inter-Parliamentary Union conference in Havana, strongly attacked the United Kingdom Government's policy in Northern Ireland. Mankind should be ashamed, he said, that "10 Irish patriots" had been allowed to die in pursuit of "their reasonable demand to be recognised as the political prisoners which they undoubtedly were", and he urged the conference to condemn outright the holocaust of the Maze Prison created by "the British Government's stubbornness, intransigence, cruelty, and insensitivity", which was "worse than the Spanish Inquisition". However, when in November 1982 President Castro broke his journey at Shannon airport after attending Brezhnev's funeral, he told reporters that he favoured a peaceful settlement of the Irish conflict.

Western Europe

In most West European countries there are now one or more "Irish solidarity" groups, usually composed of anarchists or others on the Trotskyist fringe. Many of these groups originally supported the Official IRA/Sinn Fein but, after the Official IRA declared a truce in the early 1970s, they tended to transfer their support to the Provisionals or, in some cases, to the Irish Republican Socialist Party (IRSP) and its military wing, the Irish National Liberation Army (INLA) which broke away from the Officials in 1974-75. In recent years, the Provisional IRA and INLA have sought to extend their contacts through these groups, but most of the links are opportunist and have failed to generate lasting support.

One of the earliest European support groups was the West German-Ireland Solidarity Committee (WISK), based at Oberursel near Frankfurt-am-Main and founded in 1972. It is associated with a number of other groups including the Irland Komitee West Berlin (IKW). It originally supported the Officials but now supports the IRSP and the Provisionals. It has organised a number of solidarity conferences, including a "European conference" in January 1979 of solidarity groups from Norway, France, Holland and Germany, but even during the 1980 and 1981 hunger strikes failed to make any real impact. A number of local Irish solidarity groups were formed as a result of a tour in October 1981 organised by the Anti-H-Block Committee in Frankfurt, but they too failed to make any major impact. But after a conference of solidarity groups in Munster in December 1981 on better coordination between these organisations and the Provisional Sinn Fein, members of Sinn Fein and the IRSP made a number of tours - largely ineffectual - in late 1982 and early 1983.

By contrast, Irish support groups in France have been among the most active in Europe - partly because of France's historical links with Irish nationalism and partly because it is a convenient meeting place for Irish terrorists (there is a direct ferry connexion with Rosslare and Cork). During the 1980-81 hunger strikes their activities were supplemented by those of the French Communist Party (largely for domestic political reasons) and the main Communist-led French trade union federation, the CGT.

The best-known of the French groups is the Comité Irlande, based in Paris, with branches in several towns. It was established in 1975 and publishes *Irlande en Lutte*. Its leading members include Bernard Spiteri (arrested in 1980 for attempting to rob a bank messenger) and the journalists, Roger Faligot and Alain Frilet. Faligot helped in late 1977 to found a monthly journal, *Irlande Libre*, to "deepen understanding in France of Irish politics, culture and social life and the Irish people's struggle for self-determination". He is the author of several books "exposing" Western intelligence services, and contributes to the left-wing publication, *Libération*. Frilet, while *Libération* correspondent in Belfast in August 1978, was arrested on IRA membership charges; after being given bail, he returned to Paris without standing trial.

During the 1980-81 hunger strikes a number of new support committees emerged in France. Virtually all cooperated in the establishment in October 1980 of the Comité de Défense des Prisonniers Irlandais. In August 1981, a Comité Solidarité Irlande was formed to "support young Irish patriots dying in Long Kesh prison", Communist and CGT members predominating.

Many left-wing groups in France have played host to visiting Irish extremists. In September 1981, Mrs Bernadette McAliskey went to France after being refused permission to enter Spain (on the grounds that during the 1979 Spanish general election she appealed for civilian armed struggle); her visit was organised by the Communist Revolutionary League. Also in September, Owen Carron, then MP for Fermanagh and South Tyrone, attended the annual Communist Fête de L'Humanité. In December 1981 a tour by Aidan McAtee of Provisional Sinn Féin and Barbara Brown of the National H-Block/Armagh Committee, organised by Irlande Libre, included an official reception by the Communist-controlled municipality of Rennes.

Michele Bonnechere claimed in the Provisional quarterly IRIS (March 1983) that "a broad movement of popular support has blossomed" [in France], but she admitted that it had not yet reached fruition and that there was "widespread disapproval of any action which causes injuries to civilians".

There are also active links with Corsican nationalists, including the Front de la Libération Nationale de la Corse (FNLC), which was declared illegal by the French Government in January 1983. In August 1982 Provisional Sinn Féin was represented at an international gathering in Corte organised by the Conseil des Comités Nationalistes or Consulta di i Cumitati Nazionalisti (CCN), the Corsican nationalist political movement whose relationship with the FNLC is similar to that between Provisional Sinn Féin and the Provisional IRA. A fortnight later a Frenchman associated with Corsican nationalism was arrested at Cherbourg on his way to Ireland and charged with illegally possessing and transporting explosives. Later in 1982, FNLC representatives attended the Sinn Féin ard fheis in Dublin.

The small but vociferous support groups in the Netherlands include the Ierland Komitee Nederland (IKN), founded in May-June 1975 in Breda. Several of those associated with it have been arrested on explosives and similar charges, including Els (Elizabeth) Van Hout, who while visiting Ireland with a group of radical feminists in July 1980 was detained on suspicion of having links with INLA; she was subsequently served with an exclusion order banning her from the United Kingdom. There are similar groups in Belgium, some dating from the early 1970s. More recent organisations include an Irlande Libre committee (established in Brussels in 1978 by supporters of the French publication), whose objectives were to "inform the Belgian people about Ireland and to assist Irish resistance". A Flemish group, Werkgroep Ireland, has also been active in recent years. In August 1981 An Phoblacht/Republican News reported that Werkgroep Ireland members "recently in Czechoslovakia" had noted a high level of support there for the hunger strikers.

Contacts with the Basque ETA have existed since the early 1970s. Provisional Sinn Féin has had frequent contacts with Euskal Iraultzarako Alderdia (EIA - the Party for the Basque Revolution) which is in effect the political wing of ETA-pm (VII) Assembly. The Provisional Sinn Féin president, Ruairi O'Bradaigh, has travelled to the Basque region as EIA's guest, and EIA representatives regularly attend the Provisional Sinn Féin ard fheis. In January 1979, members of Provisional Sinn Féin, EIA and a radical Portuguese workers' group, the Organizacões Unitárias de Trabalhadores (OUT), met in San Sebastian to "discuss common problems in the revolutionary process in all three countries" (An Phoblacht/Republican News, 24 February 1979). While in Spain in February/March 1980, O'Bradaigh met members of the Chilean MIR and the Eritrean People's Liberation Front. In March 1982, Richard Behal attended the founding congress near Bilbao of a new Basque Socialist Party, the Euskadiko Eskerra, formed by members of EIA, ESEI and a dissenting branch of the Communist Party.

Basque nationalists are frequent visitors to Ireland. The Basque lawyer Juan Maria Bandres (a deputy in the Spanish Parliament for Guipuzcoa since 1977 and president of the New Basque socialist party Euskadiko Eskerra) attended a conference on "European political prisoners" in Dublin in April 1979 and actively supported the hunger strike campaign. The Basque MP Inaki Ruiz de Pinedo (a Herri Batasuna deputy for Alava in the Basque Parliament) attended a Belfast anti-H-Block conference in May 1981. An Ireland-Galicia committee was formed in mid-1981 to "support the Irish struggle". In October 1981, a march in support of the H-Block and Armagh prisoners was organised in Valencia by EUPV, a local independence movement; it was addressed by Christine McAuley (Sinn Féin's "department of women's affairs") and was supported by Basque nationalists and by anti-nuclear and anti-NATO groups.

Senator SPECTER. Mr. Karn, would you rise and be sworn, please.
[The witness was sworn.]

**TESTIMONY OF LYLE KARN, DISTRICT DIRECTOR, IMMIGRATION
AND NATURALIZATION SERVICE, PHILADELPHIA, PA**

Senator SPECTER. Mr. Karn, let me come right down to the very crux of the entire proceeding, putting all of the information face up in terms of the concerns which the subcommittee has. I speak for the subcommittee.

As you know, and this was developed at the earlier hearing, the investigation into Judge Hupp's activities was initiated solely on the basis of a handwritten letter, anonymous handwritten letter, which I shall read fully, because it is all relevant.

"Office of Professional Responsibility, U.S. Immigration and Naturalization Service, 425 I Street, N.W., Washington, DC 20536," and I read all of that because it has some indication of showing the address was made by somebody knowledgeable with specific details of how to reach the Immigration and Naturalization Service.

Gentlemen: I must report to you that every Friday on which U.S. Immigration Judge Ernest Hupp is stationed in Philadelphia, PA, U.S. Immigration and Naturalization office, he leaves this office between 12 noon and 1 p.m., drives to his residence in the State of Maryland.

"Judge Hupp does not take annual leave for these hours, but rather, pretends that he is going to the library either in the Philadelphia Federal Building or the Widener Building, Center City, to do legal research."

"The real truth is that he always goes to his automobile and drives to Maryland."

This memorandum, which was purportedly sent by you to Judge Hupp and, for the record, did you hear Judge Hupp read that into the record?

Mr. KARN. Yes.

Senator SPECTER. Was it an accurate statement of the memo which you did send to him?

Mr. KARN. Yes.

Senator SPECTER. On October 17?

Mr. KARN. Yes.

Senator SPECTER. It has within its context this statement: "Upon further checking, I am informed that you have indicated that research is necessary away from the office either in the law library in this building or at a library elsewhere."

I call your specific attention to the earlier memo which refers to the library either in the Philadelphia Federal Building or the Widener Building in Center City, to do legal research.

The crux of concern is why there would be a following of more than 125 miles in the context of an anonymous complaint that Judge Hupp was doing research in two buildings in Center City, Philadelphia, PA, which could be ascertained with the surveillance of a much lesser duration.

In the context of the surveillance which had all the appearance of deliberately, inartfully done, if you listen to the testimony, and then in the context of what Judge Hupp has testified to about the disagreements which you and he have had as was evidenced by the memorandum and perhaps most pointedly by the correlation between this anonymous handwritten memo and your own memoran-

dum, which refers in sequence to research in the office either at the law library or in a library elsewhere.

Now, that is really the essence of concern, Director Karn, and I wanted to lay it all out right on top of the table, so it would all be before you to get your response.

Mr. KARN. The memo—that was my memo. I did write it to him and—for those reasons. As far as the following of Judge Hupp, that is totally within the realm of the Office of Professional Responsibility. I have no control over that.

Senator SPECTER. Did you ever have any contact with the Office of Professional Responsibility concerning Judge Hupp?

Mr. KARN. When it came to my attention that the people that followed Judge Hupp was possibly OPR, I called the Acting Commissioner, Doris Meissner, and I asked her, "Is there anything to that? Does OPR have an investigation going on Judge Hupp?" And she says, "I don't know. I'll either get back to you or have somebody get back to you."

At which time—or soon thereafter——

Senator SPECTER. This was after Judge Hupp had been followed?

Mr. KARN. Yes.

Senator SPECTER. Did somebody get back to you?

Mr. KARN. Mr. Connery called back and he did say, yes, they did have an investigation going. That has been really the extent of my involvement.

Senator SPECTER. On approximately what date did you place that call to Acting Commissioner Meissner?

Mr. KARN. I really cannot remember. It——

Senator SPECTER. At approximately what time on what date did you learn about the following of Judge Hupp?

Mr. KARN. That is what I really cannot pinpoint.

Senator SPECTER. Was it within a week or two?

Mr. KARN. Either an article appeared in the paper or it was a call from maybe the Baltimore office as a result of Judge Hupp's talking to Petersam. I really do not know. But it was soon thereafter.

Senator SPECTER. Well, Director Karn, why would you make an inquiry about an investigation by the Office of Professional Responsibility?

Mr. KARN. Just the fact that he was hearing this case, the *Michael O'Rourke* case, and he just recently had a hearing in New York, and just to verify the fact was it or was it not OPR.

Senator SPECTER. If there had been an OPR investigation, do you think that that would have borne on his competency or qualification to continue with the hearing?

Mr. KARN. On Judge Hupp?

Senator SPECTER. Yes.

Mr. KARN. My own opinion? I do not know. I really could not answer that.

Senator SPECTER. Well, my question is, did you make the inquiry because of your concern with his qualification or competency to continue the hearing?

Mr. KARN. No; no.

Senator SPECTER. Why did you make the inquiry?

Mr. KARN. Well, like I said, to satisfy myself whether or not OPR was following Judge Hupp.

Senator SPECTER. Well, I have heard you say that, but if OPR is making an investigation, would it not customarily be confidential?

Mr. KARN. Generally it is, yes.

Senator SPECTER. Would it be appropriate for you, even in your capacity as District Director, to ask about it or to find out about an investigation by the Office of Professional Responsibility?

Mr. KARN. I thought it would be proper, but that is the reason I called Mrs. Meissner rather than calling OPR, because it is autonomous.

Senator SPECTER. Why is that?

Mr. KARN. Well, they operate on their own.

Senator SPECTER. I know they do and—

Mr. KARN. That is the reason I did not call them, because I figured, well, if I called them direct, I may not get a response. That is the reason I called Mrs. Meisser.

Senator SPECTER. Well, you might get a response from them or they might take umbrage at it. Was that a concern of yours that they might take umbrage at it?

Mr. KARN. It did not enter my mind really.

Senator SPECTER. But I am still trying to understand what the relevancy was or, stated more bluntly, what business it was of yours if he was under investigation by the Office of Professional Responsibility?

Mr. KARN. That part of it did not—what did bother me was he—he was hearing the O'Rourke case. And it was an important case.

So, if OPR was following him, I would have liked to have known about it.

Senator SPECTER. All right, you made that inquiry before he was off the case?

Mr. KARN. Yes.

Senator SPECTER. It was your feeling that if he was under investigation by OPR that the subject matter of that investigation could have been such—not necessarily—but could have been such which would have disqualified him from continuing to hear cases as important as O'Rourke's?

Mr. KARN. Well, I was aware that Judge Hupp was quite apprehensive over this following, because—I think I got that from the Baltimore office, Mr. Petersam.

So—

Senator SPECTER. You say you made this inquiry of OPR prior to the time that Judge Hupp took himself off the case.

Mr. KARN. Yes.

Senator SPECTER. But did you make this inquiry of OPR—did you make this inquiry about the OPR investigation after Judge Hupp was followed?

Mr. KARN. Yes.

Senator SPECTER. Well, how did you find out about Judge Hupp's being followed—

Mr. KARN. Like I say—

Senator SPECTER. Excuse me, let me finish my question.

Mr. KARN. OK.

Senator SPECTER. How did you find out about Judge Hupp's being followed prior to the time that he took himself off the case?

Mr. KARN. Like I say, I believe there was an article in the paper. The fact that he talked to Baltimore. I do not know how it came to my attention, going back 4 years—5 years ago.

But something said OPR, IRA and I knew that OPR worked under the Central Office, so that is the reason I called there to find out. Was it, in fact, OPR or maybe it was the IRA.

Senator SPECTER. Judge Hupp, did something appear in the paper about your being followed prior to the time you took yourself off the case?

Judge HUPP. I have no vivid recollection. I would not doubt it, but just at this juncture I cannot put everything in a timeframe and say yes or no. I just cannot recall.

Senator SPECTER. Well, I am trying to focus on what Director Karn has just said, Judge Hupp, about his having found out about your being followed prior to the time you took yourself off the case.

Now, as you have described it, you took yourself off the case very early in the proceeding, like the following Tuesday, the 26th.

Judge HUPP. I dictated a letter to Petersam's secretary in Baltimore the morning of Tuesday following the Friday trailing, yes.

Senator SPECTER. You took yourself off the case at that time?

Judge HUPP. Well, it was not official because it had not been typed and signed. The first thing that the secretary typed and I signed was the incident report to Commissioner Meissner. That was the thing I was urged to do, to call this to her attention.

Then the recusal was a matter between the Chief Immigration Judge and myself, that was secondary.

Senator SPECTER. You dictated it on the 26th and you signed it on the 29th?

Judge HUPP. The recusal. The incident was signed the same day, because I dictated it while I was hearing cases in Baltimore. She proceeded to type it and then I signed it before I went to—

Senator SPECTER. The incident was signed and dictated on the 26th, the recusal was dictated on the 26th and not signed until the 29th?

Judge HUPP. That was the recusal, yes.

Senator SPECTER. How did it happen that you called Mr. Petersam? Is it Petersam?

Judge HUPP. P-e-t-e-r-s-a-m.

Senator SPECTER. How did it happen that you called Mr. Petersam in Baltimore as opposed to calling Mr. Karn in Philadelphia?

Judge HUPP. Well, first of all, Mr. Karn never was my supervisor and I felt no obligation to report to him, so therefore I had no—in my mind—intention of calling him.

First of all, Mr. Petersam and I worked together as general attorneys with the Immigration Service 30 years ago. He is a lifelong friend of mine.

Senator SPECTER. Mr. Petersam was the District Director in Baltimore?

Judge HUPP. Acting.

Senator SPECTER. Acting District Director?

Judge HUPP. He is Deputy District Director and still is.

Senator SPECTER. Well, of course, he was not your supervisor either, but as you say, you just felt closer to him?

Judge HUPP. Well, certainly, because he and I used to go on trips together as general attorneys all over the State of Maryland. We were good friends.

We would leave at 6 o'clock in the morning, go to places like La-Plata, MD, Salisbury, MD, and we conduct hearings in those places.

We would stay overnight in hotels together. We would have one room and he would have one bed and I would have one bed. We were very close. He is like a member of the family.

Senator SPECTER. Director Karn, have you ever seen this anonymous handwritten complaint? I am having Mary Louise Westmoreland bring it around so you can see it.

[Whereupon, the document was handed to the witness.]

May the record show that Director Karn is now examining the anonymous complaint which I just read into the record.

[Whereupon, Mr. Karn peruses document.]

Mr. KARN. Yes, I have seen this.

Senator SPECTER. Do you have any idea at all who wrote that?

Mr. KARN. No idea whatsoever.

Senator SPECTER. You say the only time you ever talked to anybody from the Office of Professional Responsibility about Judge Hupp's matter was after Judge Hupp had been followed?

Mr. KARN. It was after the—followed, yes.

Senator SPECTER. After the following?

Mr. KARN. Yes.

Senator SPECTER. Did you talk to anybody in the Office of Professional Responsibility other than Mr. Connery?

Mr. KARN. One other time when I was shown this letter here, which was subsequent to the recusal---

Senator SPECTER. At about what time was that?

Mr. KARN. It would be solely a guess. I would say it would be at least a month.

Senator SPECTER. At least a month after the recusal?

Mr. KARN. I would say at least, but understand it is a guess.

Senator SPECTER. All right. Whom did you talk to from the Office of Professional Responsibility on that occasion?

Mr. KARN. It was Mr. LaSalle.

Senator SPECTER. So, you talked to Mr. Connery once on the telephone or did you talk to him in person?

Mr. KARN. Pardon me?

Senator SPECTER. When you talked to Mr. Connery of the Office of Professional Responsibility, was that on the phone or in person?

Mr. KARN. No, that was on the phone.

Senator SPECTER. You never talked to Mr. Connery in person?

Mr. KARN. Not regarding this, no, until---

Senator SPECTER. Do you talk to him about other matters in person? Do you know Mr. Connery?

Mr. KARN. Oh, yes.

Senator SPECTER. When did you first meet him?

Mr. KARN. I do not know who came on first, Mr. Connery or myself. I know in June 1979, when I was selected as District Director in Philadelphia, I stopped by to talk to him.

Senator SPECTER. Was he in Washington at that time?

Mr. KARN. Yes.

Senator SPECTER. Was that the first time you met him?

Mr. KARN. I think it was.

Senator SPECTER. In 1979?

Mr. KARN. Yes; I talked to the OPR office prior to going to Philly, just generally.

Senator SPECTER. About what?

Mr. KARN. Is there anything I should know, anything that is going on down there concerning OPR? I am thinking I talked to Mr. Connery and I met him then, but I know I talked to him—

Senator SPECTER. So, it was just a general session to find out if there was anything special you ought to know?

Mr. KARN. It was a one-time deal, yes.

Senator SPECTER. Have you ever talked to Mr. Connery on any occasion since that initial visit in 1979?

Mr. KARN. Once in I think 1980—probably 1981. We had a District Directors conference in Glynco, GA, and while I did not see him, we shared the same townhouse, the same residence down there.

In other words, he had a bedroom, I had a bedroom, somebody else had a bedroom.

Senator SPECTER. In the same house?

Mr. KARN. In the same house, but we never did see each other.

Senator SPECTER. Was that before or after May 22, 1981?

Mr. KARN. I think it was after. I think it was probably in 1982.

Senator SPECTER. Not 1981, but 1982?

Mr. KARN. I think it was 1982.

Senator SPECTER. But you did not talk to Mr. Connery during that particular conference?

Mr. KARN. No. I will not say I did not run across him. He was there giving a presentation to the District Director.

But I do not think other than maybe at a cocktail hour or anything that we talked.

Senator SPECTER. OK, so you talked to Mr. Connery in 1979, you might have talked to him in 1981 or 1982 at this session. Did you talk to him on any other occasion?

Mr. KARN. I do not recall any.

Senator SPECTER. Did you talk to anybody who was connected or associated with Mr. Connery in the Office of Professional Responsibility or otherwise concerning Judge Hupp's matter?

Mr. KARN. No.

Senator SPECTER. Did anybody from your office, at your direction, or known to you talk to Mr. Connery or any of Mr. Connery's associates?

Mr. KARN. Not to my knowledge, not at my direction.

Senator SPECTER. Have you ever known of a case where the administrative law judge could be followed on the basis of one anonymous complaint, Director Karn?

Mr. KARN. Do I know of any?

Senator SPECTER. Have you ever known of one like that?

Mr. KARN. No, I do not. I have been District Director, like I said, since 1979, but only in Philly.

Senator SPECTER. Would you have any idea, any speculations who might have sent this anonymous handwritten letter?

Mr. KARN. No.

Senator SPECTER. Let me excuse you gentlemen for 1 minute and call some of the other witnesses if we might. If you gentlemen would step back.

You are welcome to stay, Mr. Raynsford, because—

Mr. RAYNSFORD. Thank you.

Senator SPECTER. I call Mr. Walter Connery, Mr. Ted Weiss, Mr. Gerard LaSalle, and Mr. Louis DeMartinis.

Mr. Connery, we did not sequester the witnesses today.

Mr. CONNERY. Yes.

Senator SPECTER. With deliberation, we did not. Let me ask you gentlemen to stand and be sworn.

[The witnesses were sworn.]

TESTIMONY OF WALTER CONNERY, DIRECTOR, OFFICE OF PROFESSIONAL RESPONSIBILITY; TED WEISS, GERARD LaSALLE, AND LOUIS DeMARTINIS, INVESTIGATORS, IMMIGRATION AND NATURALIZATION SERVICE

Senator SPECTER. Mr. DeMartinis, let's start with you. Did you ever have a conversation with Mr. Karn about Judge Hupp's matter?

Mr. DeMARTINIS. Senator, I do not recall. There was so much going on at that time, I could have. I have no independent recollection of having the conversation with him.

Senator SPECTER. When you say "so much going on," whom were you talking to about this matter?

Mr. DeMARTINIS. I have a vague recollection of talking to the FBI and talking to Mr. Connery, naturally, Mr. LaSalle, Mr. Weiss, and Mr. Belote.

There was a series of calls back and forth when we realized that had happened and, you know, we were just talking back and forth to one another.

Senator SPECTER. Did any of those calls ever give you any inkling that the investigation had been initiated—this anonymous letter—you are familiar with this anonymous letter?

Mr. DeMARTINIS. Yes, I am.

Senator SPECTER. You have testified here before. Any inkling that this anonymous letter had been inspired by anybody in the Immigration and Naturalization Service?

Mr. DeMARTINIS. We were inclined to believe that it was because of the way it was addressed to us and what it said, yes.

Senator SPECTER. Did that give you any pause about conducting the investigation once you had inspected that it might have been originated with somebody in the Immigration and Naturalization Service?

Mr. DeMARTINIS. No, sir; if anything, it went the other way. It would give us a little impetus to investigate because we felt that it was someone that obviously knew the area and what was going on at the time.

Senator SPECTER. If the complaint had come from somebody in the Immigration and Naturalization Service, would not the appro-

priate format for them have been to stand behind it, identify themselves, name their name?

Mr. DEMARTINIS. Well, there are many reasons why people do not do that. They are afraid of retribution.

Senator SPECTER. Any good reasons?

Mr. DEMARTINIS. Well, particularly—

Senator SPECTER. There are lots of reasons why people operate anonymously, but any good ones?

Mr. DEMARTINIS. Well, sir, there could be. If the person worked for the judge or worked in the office and was afraid of retribution; it could have—

Senator SPECTER. Who could an administrative law judge take retribution against? His powers are described, he hardly had any.

Mr. DEMARTINIS. Well, I do not know, Senator. But there are a lot of people who just do not want to come forward and make their complaints known.

Senator SPECTER. Mr. DeMartinis, when you say it could have gone in favor of the investigation, were you aware that Judge Hupp was on this highly sensitive *O'Rourke* case?

Mr. DEMARTINIS. No, sir, I was not.

Senator SPECTER. When the thought crossed your mind that the investigation might have been initiated by somebody from Immigration and Naturalization, did you think that it might have been initiated by someone from INS with the view of driving Judge Hupp off the case?

Mr. DEMARTINIS. We knew nothing about the case, Your Honor. We did not know that he was on the *O'Rourke* case.

Senator SPECTER. When you say you might have talked to Director Karn, that is you say you have no active recollection, are you really saying you do not want to swear—you do not really know about because you just cannot remember everybody you talked to, or are you saying—

Mr. DEMARTINIS. No, sir; I am saying I have no recollection at this time of speaking to Mr. Karn, but it is possible that I did, because there were so many telephone calls going back and forth that day.

Senator SPECTER. What I am trying to get at, again on top of the table, you are a careful man and I appreciate that, you are under oath and I appreciate that, and the question is whether you have talked with Mr. Karn in the past.

If you have no independent recollection of it, because you talked to a lot of people and you do not want to say that you did not talk to him, because you might have, that is in one category.

If, on the other hand, there is something in the back of your mind that you really might have talked to Mr. Karn or something and the circumstances would have led you to think that would have been a conversation you would have had—because a lot of what we think is reconstructed—everything is to some extent without a present recollection.

What I am probing for here—again everything on top of the table—is, what is your thinking when you say that you have no active recollection if you can delineate it more specifically?

Mr. DEMARTINIS. Well, his name could have been mentioned by Mr. Belote. It could have been mentioned by the Commissioner, the

FBI, whoever I was talking to that day, or I could have had a conversation with him. I am sure his name came up.

Senator SPECTER. You are sure his name came up?

Mr. DEMARTINIS. Yes.

Senator SPECTER. Any idea as to in what connection his name came up?

Mr. DEMARTINIS. I believe that he had made some inquiry as to whether OPR was following the judge.

Senator SPECTER. He had made some inquiries as to whether OPR was following the judge?

Mr. DEMARTINIS. Yes, sir.

Senator SPECTER. Had he talked to you about that?

Mr. DEMARTINIS. I am not certain, sir. I do not recall him speaking to me directly about it, no.

Senator SPECTER. When did you first get into this case?

Mr. DEMARTINIS. At the outset, at the reception of the letter.

Senator SPECTER. At the reception of the letter?

Mr. DEMARTINIS. Yes, sir; I knew about the case at the time.

Senator SPECTER. When was the letter received?

Mr. DEMARTINIS. I believe it was February.

Senator SPECTER. Well, trying to pinpoint the time when Mr. Karn made inquiries about OPR being involved in an investigation, can you pinpoint when that would have been? It would have been sometime after February 1981.

Again, going right to the point, was it before July 22, 1981—pardon me, before May 22, 1981?

Mr. DEMARTINIS. It was after the incident of the following.

Senator SPECTER. How do you know that?

Mr. DEMARTINIS. That was the only time that I talked to anyone about it.

Senator SPECTER. You knew about it in February, but you did not talk to anybody about it until after the following?

Mr. DEMARTINIS. Yes, sir, other than OPR personnel. I would not speak to anyone about that other than OPR personnel and perhaps the Commissioner if the Commissioner would have asked, but that is about all. I would not talk to the District Director about it.

Senator SPECTER. Well, you might not have talked to him after May 22 either.

Mr. DEMARTINIS. That is possible, sir, yes.

Senator SPECTER. Is it possible that he talked to somebody—Mr. Karn talked to somebody before May 22 and you found out about that before May 22?

Mr. DEMARTINIS. Anything is possible, sir, but I have no recollection of it.

Senator SPECTER. Well, you say that you are not sure that you talked to Mr. Karn ever.

Mr. DEMARTINIS. Yes, sir, that is correct.

Senator SPECTER. You talked to OPR people about this investigation.

Mr. DEMARTINIS. Yes.

Senator SPECTER. To some extent before May 22, 1981?

Mr. DEMARTINIS. Yes, sir, definitely.

Senator SPECTER. Are you sure or relatively sure that you did not know that Mr. Karn had made an inquiry about this matter prior to May 22, 1981?

Mr. DEMARTINIS. Yes, I am relatively sure that to my knowledge he did not make any inquiries prior to May 22, 1981.

Senator SPECTER. At this time, Mr. DeMartinis, do you know or have any reasonable suspicion as to who wrote this anonymous letter?

Mr. DEMARTINIS. No, sir, I do not.

Senator SPECTER. Any speculation?

Mr. DEMARTINIS. Well, if I were to speculate, I would speculate that someone in the office, his secretary, or someone in the office wrote it, a clerk, anyone.

Senator SPECTER. Mr. LaSalle, did you ever talk to Mr. Karn about this investigation?

Mr. LASALLE. Yes, sir, I believe I did.

Senator SPECTER. When did you talk to him about it?

Mr. LASALLE. I do not recall the date. I was in the district office and I believe I even showed him that letter. I may have asked him who he thought was the author of it.

Senator SPECTER. What did he say to you?

Mr. LASALLE. He said—words to the effect that he did not know, you know. We speculated on the style of writing, I believe, and it appeared to be someone—it appeared to be a female's writing, you know, not being a forensic specialist.

It was just pure speculation and if there was a possible lead—

Senator SPECTER. Not being a forensic specialist? A forensic specialist could not tell you much about who wrote it in the abstract.

Mr. LASALLE. No, but I guess he—maybe he could make a determination on the gender. I do not know.

Senator SPECTER. Mr. LaSalle, when did this conversation with Mr. Karn occur?

Mr. LASALLE. I do not recall, Senator.

Senator SPECTER. Could it have been before May 22, 1981?

Mr. LASALLE. Definitely not.

Senator SPECTER. Why are you so definite about that?

Mr. LASALLE. Because I would not speak to the—the policy was to contain the information. I'd have no reason to speak to the Director prior to the surveillance—the auto—the mobile surveillance.

Senator SPECTER. Did you have a reason to speak to him after the surveillance was conducted?

Mr. LASALLE. I believe I did, because I recall retrieving some documents from the district office in Philadelphia, and that is part of our investigative report.

Senator SPECTER. And it would have been on that occasion that you would have talked to Mr. Karn about it?

Mr. LASALLE. Probably, yes.

Senator SPECTER. Did you talk to Mr. Karn once or more than once?

Mr. LASALLE. Once.

Senator SPECTER. Only once?

Mr. LASALLE. Yes.

Senator SPECTER. And you have no idea who wrote this anonymous letter?

Mr. LASALLE. No, sir, I do not.

Senator SPECTER. Mr. Weiss, did you ever talk to Mr. Karn about this investigation?

Mr. WEISS. Once; I met Mr. Karn this afternoon for the first time. I did not speak to him about it.

Senator SPECTER. You never talked to him before?

Mr. WEISS. That is correct.

Senator SPECTER. Mr. Weiss, did you ever talk to anybody else from the Immigration and Naturalization Service other than in OPR about this letter?

Mr. WEISS. No, sir.

Senator SPECTER. Mr. LaSalle, did you ever talk to anybody else in Mr. Karn's office about the letter?

Mr. LASALLE. No, sir.

Senator SPECTER. Mr. DeMartinis, did you ever talk to anybody else in Mr. Karn's office about the letter?

Mr. DEMARTINIS. No, sir.

Senator SPECTER. Mr. Connery, did you talk to Mr. Karn about this letter?

Mr. CONNERY. I don't believe we talked to Mr. Karn about the letter. I do not believe I did.

Senator SPECTER. Are you sure?

Mr. CONNERY. On that, Senator. I did have a conversation with him.

Senator SPECTER. You say you are not sure?

Mr. CONNERY. I said, no, I am not sure, but I know I did have a conversation with him, but I do not believe that was the subject matter.

Senator SPECTER. When did you have a conversation with Mr. Karn?

Mr. CONNERY. It was after the tailing incident, after the May 22 date.

Senator SPECTER. How long after that?

Mr. CONNERY. I do not exactly recall. It was not very long after that. I would say it was within the week after that.

Senator SPECTER. What was the substance of that conversation?

Mr. CONNERY. I do not recall exactly. I do believe it concerned the fact that he wanted to verify whether we had been following Mr. Hupp since I believe Mr. Karn's concern—and I am trying to recall now back over a couple of years—was that the judge might have misconstrued who was following him.

And then I believe it was at that time or the day after that I became aware of the fact that the judge might have misconstrued who was following him. He was mistaken, that it was not Federal investigators following him, but possibly someone else.

Senator SPECTER. Did Mr. Karn think at that time IRA may have been following the judge?

Mr. CONNERY. I really do not recall the exact context of the conversation, but it was along the general lines of what I gave you, Senator, just before.

Senator SPECTER. I do not quite understand. Would you repeat what the conversation was about.

Mr. CONNERY. I believe Mr. Karn—and this is going back over 3 years ago—I believe Mr. Karn was concerned, and wanted to verify

whether we had been following Judge Hupp as opposed to someone else. And I told him that it was our investigators. Yes.

Senator SPECTER. Did you tell him why you had been following him?

Mr. CONNERY. I do not recall, Senator. I might well have.

Senator SPECTER. Did you discuss with Mr. Karn this anonymous letter?

Mr. CONNERY. That is possible, Senator, but again I do not recall.

Senator SPECTER. Did you have more than one conversation with Mr. Karn on this subject?

Mr. CONNERY. I believe that was the only conversation I had with him.

Senator SPECTER. Have you ever had any conversations with Mr. Karn about any other subjects?

Mr. CONNERY. I gave a couple of presentations to the District Directors Association, I believe there were two. And it is possible at that time, on just a general integrity topic, I might have had a conversation with Mr. Karn.

Senator SPECTER. But nothing you recall specifically about Judge Hupp's incident?

Mr. CONNERY. Other than that conversation, I do not recall, Senator.

Senator SPECTER. Would anybody care to add anything else at this juncture? Mr. Connery? Mr. DeMartinis? Mr. Weiss? Mr. LaSalle?

Mr. CONNERY. Yes; I would.

Senator SPECTER. All nod no, except Mr. Connery.

Mr. CONNERY. Right.

Senator SPECTER. Go ahead, Mr. Connery.

Mr. CONNERY. I would like to say, Senator, that—and I would like to say this to Judge Hupp too, when I heard of this incident, I wanted the judge to be informed immediately, and they did attempt to inform him immediately as to the true cause of it.

I was very concerned that this man might have misconstrued, as he obviously did, the purpose of what was an administrative investigation, which admittedly took on a rather bizarre twist, certainly in that man's mind, because of the case he was conducting which we knew nothing about.

In fact, I personally composed to Doris Meissner the apology letter on that issue, and I again apologize to Judge Hupp personally.

There was no intent on our part to cause him the concern that he obviously had about this matter.

Senator SPECTER. Mr. Connery, it took on a bizarre twist not only in his mind, but in some other minds.

Mr. CONNERY. That is quite correct, Senator.

Senator SPECTER. Like mine.

Mr. LaSalle, where did you learn how to conduct an automobile surveillance, if at all?

Mr. LASALLE. At our academy. [Laughter.]

Senator SPECTER. Where did you learn how to conduct an automobile surveillance to be detected by the person you were following, if at all?

Mr. LASALLE. They did not teach us that one, how to get detected.

Senator SPECTER. They teach you how to get detected?

Mr. LASALLE. No, no; they did not.

Senator SPECTER. Do they teach you how not to get detected?

Mr. LASALLE. Yes.

Senator SPECTER. When teaching you how not to get detected, do they teach you really how to get detected?

Mr. LASALLE. Well, this set of circumstances surrounding this, Senator, as you heard the judge testify, that we were close to him.

You know, ideally we tried to maintain three cars in front of us, not even three car lengths. When there were no cars in front of us, you know, ideally it was to maintain five car lengths.

Senator SPECTER. How many automobile surveillances have you been on?

Mr. LASALLE. About four.

Senator SPECTER. How many times have you been detected?

Mr. LASALLE. This was the only time, Senator. [Laughter.]

Senator SPECTER. All right, thank you very much, gentlemen. Judge Hupp, would you step back forward, please.

Judge Hupp, there is one other point that I want to cover with you on the testimony, and that is your statement to Ms. Westmoreland, which I consider a very important factor here.

This appears in her memorandum to me dated June 15, concerning her conversation with you on the afternoon of June 15, that you had said that 15 or 20 of the 32 Immigration judges had told you that the incident involving you was a typical example of tactics other District Directors, including those in Seattle, Buffalo, Los Angeles, and Texas used to harass Immigration judges to get them off their cases.

My first question to you is, did Ms. Westmoreland accurately transmit to me your statement to her?

Judge HUPP. That is correct.

Senator SPECTER. Tell me just a little bit more about these 15 or 20 of the 32 immigration judges who have told you things like that.

Judge HUPP. Well, there is Judge Ragno and Judge D'Ambrosio in Boston. I worked with them in Chicago. They were judges. I was a prosecutor for the Immigration Service.

Senator SPECTER. Ragno and—

Judge HUPP. R-a-g-n-o and D-'A-m-b-r-o-s-i-o. And we, in Chicago, were very close. We went to social functions together and their wives knew my wife.

So, they said that is typical of the modus operandi of the District Directors, to try make you knuckle under and be a rubber stamp.

They have been harassed like that by the District Director up in Boston, who no longer is there, they transferred him to Japan or some place.

Gordon Sachs from Buffalo, he said the operations instructions clearly set out in OI 287 point so and so, the procedure to be followed when a complaint is registered and, therefore, the procedures state that the district director shall initiate a memo to the appropriate authorities setting forth these facts which he has reason to believe are true and correct, so that an initiation can be conducted.

Judge Betrone, Judge Springer, and Judge Irving Schwartz, all from Chicago, still there, they said typical harassment by the District Director's, they get it.

Judge Angelilli from Detroit, the same thing. He said that he is fortunate his District Director is a gentleman and that his District Director would not do anything like that, but he knows the other judges have been harassed.

Judge Weiner, in El Paso, TX, Judge Smith, in Harlingen, TX, Judge Bruce Barrett, in Houston, TX, Judge Griffin, in Los Angeles, who used to work here in Washington with me in days gone by, George D'Angellicato, who I worked with at the Board of Immigration Appeals as appellate trial attorney, they all have the same story, the same harassment.

Another Judge on the west coast, in California, was working from 7 a.m. to 3:30 p.m., his district director, I think his name is Judge Siegel, wrote him up that he was leaving every day an hour early and not charging it. It is not true.

Judge Gordon and Judge Strasser from Newark, NJ, Judge Cohen, Judge Lyons, Judge Spear, and another judge retired now, and one died in New York. It is well known with all the Immigration judges how the District Directors by and large, not all of them, harass judges to be rubber stamps.

That is why the judges now are under the Executive Office of Immigration Review and not under the Immigration Service and they are totally separate and apart.

Senator SPECTER. Is the matter now solved? Does more need to be done to guarantee the independence of the administrative law judges in immigration cases?

Judge HUPP. Well, I think more or less the matter is solved, but there is something that I feel germane to the hearing today and that is, as I listen to these other gentlemen testify, it relates, in my mind, an incident that occurred back before February 10, 1981, and I am reading a letter from Joseph S. Lord III, chief judge of the U.S. District Court, Eastern District of Pennsylvania. I think you know Judge Lord.

He wrote to the building manager on that day and he said, "This will authorize parking privileges for Hon. Ernest H. Hupp, judge, U.S. Immigration Court."

Now, the reason he did this is because he became cognizant of my being harassed by agents of the Immigration and Naturalization Service who worked for the District Director, and agency dictates that the principal is liable for the torts of these agents.

I had an investigation conducted by the U.S. attorney in Philadelphia where that office ascertained that two of Mr. Karn's agents went down to the parking area, identified themselves, badges and I.D., said this car, my car, had my name in it, Judge Ernest H. Hupp, Department of Justice, is illegally parked in a spot that only Government cars are being allowed to park in. "We want it ticketed."

That has never been done. That has never been done. The U.S. attorney's office, after investigation, who found out the two agents—I could have found their names out, but I did not want to know, because I was afraid I might be upset more, had Judge Lord

given me a parking place with other judges where I had a security card to get in and out.

Because he was so embarrassed that judges would be treated like that and the U.S. attorney had his assistant U.S. attorney, the day of the case, appear before the U.S. magistrate in Philadelphia and ask for a dismissal of the charge of parking without permission.

I got a ticket for that. It would have been a \$50 fine. And the reason I parked there is his predecessor, Mr. Raymond Morris, had given me *carte blanche* permission to park there on the occasions that I needed it.

But he did not check with Mr. Morris to see if I had *carte blanche* permission to park there.

Another incident that occurred around that time, I bought a brandnew 1981 Ford automobile, and this automobile was new.

It stalled one day and I had a man who was a mechanic take the top off of the air filter where the carburetor is, and fresh sand had been put into my carburetor that day; that fresh sand could have been put in only by somebody who got into the area where the judges park—my car is always left open—unlocked the hood, took that cap off and poured sand in there.

When I got by the airport that evening, my car stalled. Fresh sand.

These are the harassments that I was subjected to as a U.S. Immigration judge while in Philadelphia and I want the record to clearly show that.

Senator SPECTER. Why do you feel you were so harassed?

Judge HUPP. Because I was *persona non grata* with these people.

Senator SPECTER. And why were you *persona non grata*?

Judge HUPP. Because I was not a rubber stamp to stamp the cases the way they wanted it. The trial attorney would come in and say, "Well, the District Director wants this, that and the other." And my decision might not be the way the District Director wants.

So, therefore, I was an objectionable judge, because I made independent decisions.

Senator SPECTER. Judge Hupp, you have lived with this matter for a long time. It happened in May 1981. This is July 1984, 3 years and 2 months, plus. You have heard all this proceeding today.

Do you feel that you were driven off this case, the *O'Rourke* case, by the tactics of the Immigration and Naturalization Service deliberately, to get you off the case?

Judge HUPP. I have a strong feeling, not 100 percent, but all these things that I put into the record are my reasons for me to possess this feeling.

In my whole life, I have had what I call a very honorable life. I served in the Navy in World War II, in the Korean War. I chauffeured for Admiral Halsey, and that is where I learned how to detect if I was being followed.

Because I also was a Government chauffeur and knew how to detect people following me.

Senator SPECTER. Back to the question, Judge Hupp, of whether there is anything more that the Congress could do to guarantee the independence of immigration judges.

What structural changes have been made since the time that you were on the *O'Rourke* case?

Judge HUPP. Well, as I indicated, the judges are solely under the supervision of the chief immigration judge, William Roby, who is now an official of the Executive Office for Immigration Review and the Immigration and Naturalization Service has no saying whatsoever in the comings and goings of the immigration judges.

They never had the right before to have such a say, but they took it upon themselves to do this. They have usurped this authority.

Senator SPECTER. Well, are the Immigration and Naturalization judges now able to keep their own files without having them subject to the clerks?

Judge HUPP. No, the clerk of the court keeps all the record of proceedings files. She is responsible for them.

Senator SPECTER. Is there anything further that the Congress should do in your judgment to guarantee the independence of the immigration judges?

Judge HUPP. Well, I think to carry on the procedures that are now being followed since Judge Roby became a chief judge, and then there are these new procedures where the files of the immigration judge, called a record of proceedings file, are separate and apart from the administrative file, which the Immigration and Naturalization Service maintains.

Heretofore the entire A file came to my secretary and she could say, "Oh, look at this, Judge, the INS found out that this person had a welfare fraud," before I even hear the case.

Those things could occur, because the clerk of the court had the administrative file from the Immigration and Naturalization Service.

That can no longer happen because we do not have the INS file in the judge's court or in the clerk of the court's office.

Senator SPECTER. Mr. Karn, just one final question for you. In terms of the sequence of events when you sent the file up to Judge Lyons, what did occur there with respect to what Judge Hupp has testified to that went up before he had taken what he had considered the necessary steps to have venue changed?

Mr. KARN. Well, Senator Specter, I do not recall sending that file. Now, I am sure it had to get up to Judge Lyons. And I am sure whoever requested it came through me. But, for the life of me, I cannot recall.

Senator SPECTER. Cannot recall the specific time table or why it was sent then?

Mr. KARN. No; I am sorry.

Senator SPECTER. Was it customary, as Judge Hupp has testified, to have a change of venue notation by the presiding judge before the file was customarily sent?

Mr. KARN. Only when—when a motion for a change of venue—normally, it is a motion. Somebody makes a motion for a change of venue.

That judge makes his order. In this case, if it was before Judge Hupp's recusal—I really do not recall.

Senator SPECTER. Do you recall that the file was sent to Judge Lyons before Judge Hupp's recusal was final?

Mr. KARN. I do not recall.

Senator SPECTER. Director Karn, is there anything further you would like to add at this point in the record?

Mr. KARN. No.

Senator SPECTER. All right, thank you very much, ladies and gentlemen, for coming today. I am going to review this matter with Senator Hatch to determine what our conclusions are.

The matter which I find enormously troublesome is the initiation of an investigation on the basis of an anonymous letter. I also find it very troublesome the sequence which Judge Hupp has testified to about his being followed in a way which raises a strong inference, that the following was not surreptitious, that was not intended to be surreptitious, that is without being seen.

That following has all the indications of one which those following wanted the person being followed to know about.

The context of Judge Hupp's statement, in effect, that he was going to find for Mr. O'Rourke, had two more witnesses to hear, but he knew pretty much what they would say and had communicated that.

Those are the factors which are of concern. Beyond this case, I for one, am going to review the procedures which are now used on administrative law judges.

In my judgment, beyond any question, administrative law judges ought to be independent. Every judicial official in this government ought to be independent.

And everybody in the executive branch, prosecutorial branch, has a responsibility, and nobody knows that better than I—I spent most of my professional career as a prosecutor.

But those who decide cases have to be independent and they have to be removed from any sorts of pressure. They have to control their dockets and have to control their files and have to control their cases.

To the extent that this matter will shed light on ways to institutionalize that kind of independence, that is something that the Judiciary Committee will want to address itself to.

In conclusion, let me say that I know it has not been easy on everybody to step forward and have this matter scrutinized this way, and on behalf of the committee, we thank all of you for coming and for cooperating with this inquiry.

Yes? Do you have something you would like to say, Mr. Raynsford?

Mr. RAYNSFORD. I have a closing statement, Senator.

Senator SPECTER. By all means.

Mr. RAYNSFORD. I would like to note for the record that the segregation of the immigration judges from the Immigration and Naturalization Service was precipitated by the Service. It was an action which took place in 1981 and 1982.

It was our concern that judges be separate and an independent body from the Service where they had not been before.

Lastly, I realize and the Government realizes that there is a separation perhaps with respect to whether the issue of due process was fully explored with respect to the Hupp issue.

The Government, for the record, would like to indicate that there are three branches of government, the executive, the congressional, as well as judicial.

The Hupp issue was addressed in the second circuit on February 21, in the 1984 order of the second circuit denying Mr. O'Rourke's claim, the court did indicate that in its language—and I quote:

Petitioner's due process claims arising out of Judge Hupp's decision to recuse himself are so lacking in substance as to merit no discussion.

At this time, we do not believe that any further testimony has been given which would grant a claim of the fact that due process was violated in any way by the government or the executive branch.

Senator SPECTER. Well, Mr. Raynsford, since you have said that, I think there is very substantial evidence to conclude that the Immigration and Naturalization Service has denied Mr. O'Rourke due process of law. I have refrained from doing so—[Applause.]

There will be no applause or any other show of emotion or feeling in this room. This room is a hearing room. I am well aware of that statement of the second circuit. And I am also well aware there was no evidentiary proceeding anywhere along the line of any judicial inquiry into what happened here.

I believe the second circuit was derelict in not making an inquiry or not ordering an inquiry based on the record in this case.

I do not say that lightly, but I have been a practicing lawyer for some 28 years and I have seen on many, many occasions a court, in an opinion, say that there is no merit to an allegation which is made or an issue which is raised where there has been no argument, no elicitation of facts, no hearing on a very important matter.

That is not to the credit of the courts which make those statements. I would invite you, Mr. Raynsford, to disagree with me on the facts. Was there ever at any point, in any judicial proceeding, any evidentiary investigation or evidentiary proceeding on this issue of Judge Hupp's being followed?

Mr. RAYNSFORD. Well, you are entitled to your opinion, obviously.

Senator SPECTER. No, I am not asking you about an opinion, I am saying was there ever any evidentiary hearing on Judge Hupp's being followed in any proceeding this case?

Mr. RAYNSFORD. Only with respect to those papers presented on behalf of the petitioner to the court as I am aware of.

Senator SPECTER. That is not an evidentiary proceeding, Mr. Raynsford. You and I both know what an evidentiary proceeding is.

Mr. RAYNSFORD. That is correct.

Senator SPECTER. There was none. That is why it has been my determination to have this hearing. Judge Hupp, you raised your hand. Do you wish to say something?

Judge Hupp. In conclusion, I wish to close this hearing with my remarks that I have been admitted to practice law in the State of Maryland, oh, about 1951.

Never has a grievance been filed against me. I still practice law in the State of Maryland. I never, in 40-some years with the Government, ever had anything put in my 201 file.

In my opinion, I have had a perfect record. The only thing that spoiled it is this uncalled-for incident, and friends of mine who have known me all my life think that I am retired because I was forced out, that some wrongdoing was uncovered. And I said, "No, it was health reasons only."

The professor that taught me constitutional law, criminal law appeared before me in Baltimore after this hearing and said, "Oh, I thought you were removed from the bench because of that investigation." That is a terrible thing to live with.

People in the community stopped talking to my wife and I after these newspaper articles because they thought I was some kind of an evildoer.

Senator SPECTER. Well, Judge Hupp, I think there is a sufficient evidentiary basis for my comment that there is not a scintilla of evidence or a suggestion of any impropriety on your part.

I would say beyond that that my contacts with you both telephonically and today would have led me to conclude that you are a very able lawyer and a very able judge.

Judge HUPP. Thank you.

Senator SPECTER. And one who has acted entirely properly within the scope of the inquiry which I have made and which this subcommittee has conducted. Thank you all very much. The hearing is adjourned.

Judge HUPP. Thank you.

[Whereupon, at 4:13 o'clock p.m., the hearing of the Subcommittee on the Constitution was concluded.]

